रजिस्ट्री सं. डी.एल. (एन) 04/0007/2003—05 REGD. NO. D. L. (N) 04/0007/2003—05

भारत का राजपत्र
The Gazette of India

सी.जी.-डी.एल.-सा.-28082021-229290
CG-DL-W-28082021-229290

प्राधिकार से प्रकाशित
PUBLISHED BY AUTHORITY

साप्ताहिक
WEEKLY

सं. 30] नई दिल्ली, अगस्त 15—अगस्त 21, 2021 शनिवार/ श्रावण 24—श्रावण 30, 1943
No. 30] NEW DELHI, AUGUST 15—AUGUST 21, 2021, SATURDAY/ SRAVANA 24 –SRAVANA 30, 1943

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India (Other than the Ministry of Defence)

विदेश मंत्रालय
(सी.पी.वी. प्रभाग)

नई दिल्ली, 4 अगस्त, 2021

का.आ. 580.—राजनयिक और कोंसुलीय अधिकारी (शपथ एवं फीस) के अधिनियम, 1948 की धारा 2 के खंड (क) के अनुसरण में वैधानिक आदेश ।

एतद्वारा, केंद्र सरकार भारत के भारतीय दूतावास ट्यूनीश में श्री लेखराज शर्मा, सहायक अनुभाग अधिकारी को दिनांक 04 अगस्त 2021 से सहायक कोंसुलर अधिकारी के तौर पर कोंसुलर सेवाओं के निर्वहन के लिए प्राधिकृत करती है।

[फा. सं. टी-4330/01/2017]

ब्रह्म कुमार, निदेशक (सी.पी.वी.)

MINISTRY OF EXTERNAL AFFAIRS

(CPV DIVISION)

New Delhi, the 4th August, 2021

S.O. 580.—In pursuance of the clause (a) of the Section 2 of the Diplomatic and Consular Officers (Oaths and fees) Act, 1948 (41 of 1948), the Central Government hereby appoints Shri Lekhraj Sharma, Assistant Section Officer as Assistant Consular Officer in Embassy of India, Tunis to perform the Consular services with effect from 04.08.2021.

[F. No. T-4330/01/2017]

BRAMHA KUMAR, Director (CPV)

नई दिल्ली, 11 अगस्त, 2021

का.आ. 581.—राजनयिक और कोंसुलीय अधिकारी (शपथ एवं फीस) के अधिनियम, 1948 की धारा 2 के खंड (क) के अनुसरण में वैधानिक आदेश ।

एतद्वारा, केंद्र सरकार भारत के दूतावास, कुवैत में श्री जयन्त यादव, सहायक अनुभाग अधिकारी को दिनांक 11 अगस्त 2021 से सहायक कोंसुलर अधिकारी के तौर पर कोंसुलर सेवाओं के निर्वहन के लिए प्राधिकृत करती है।

[फा. सं. टी-4330/01/2019]

ब्रह्म कुमार, निदेशक (सी.पी.वी.)

New Delhi, the 11th August, 2021

S.O. 581.—In pursuance of the clause (a) of the Section 2 of the Diplomatic and Consular Officers (Oaths and fees) Act, 1948 (41 of 1948), the Central Government hereby authorizes Shri Jayant Yadav, Assistant Section Officer in Embassy of India, Kuwait to perform the Consular services as Assistant Consular Officer with effect from 11August 2021.

[F. No. T-4330/01/2019]

BRAMHA KUMAR, Director (CPV)

कार्मिक, लोक शिकायत तथा पेंशन मंत्रालय

(पेंशन और पेंशनभोगी कल्याण विभाग)

नई दिल्ली, 3 अगस्त, 2021

का.आ. 582.—केन्द्रीय सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम 1976 यथा संशोधित 1987 के नियम 10 के उप नियम (2) एवं (4) के अनुसरण में एतदद्वारा पेंशन और पेंशनभोगी कल्याण विभाग(कार्मिक, लोक शिकायत तथा पेंशन मंत्रालय), जिसके 80% से अधिक अधिकारियों/कर्मचारियों ने हिन्दी का कार्यसाधक ज्ञान प्राप्त कर लिया है, को अधिसूचित करती है।

[फा. सं. ई-11019/1/2021-रा.भा.]

अशोक कुमार सिंह, अवर सचिव

MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS

(Department of Pension and Pensioners Welfare)

New Delhi. the 3rd August, 2021

S.O. 582.—In pursuance of sub-rule (2) and (4) rule 10 of the Official languages(Use for Official Purpose of the Union) Rule 1976 (As Amended 1987) the Central Government hereby notifies the Department of Pension and Pensioners Welfare(Ministry of Personnel, Public Grievances and Pensions), more than 80% staff whereof have acquired the working knowledge of Hindi.

[F. No. E-11019/1/2021-रा.भा.]

ASHOK KUMAR SINGH, Under Secy.

श्रम एवं रोजगार मंत्रालय

नई दिल्ली, 13 अगस्त, 2021

का.आ. 583.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार महाप्रबंधक, अशोक होटल, 50-बी, चाणक्यपुरी, नई दिल्ली के प्रबंधतंत्र के संबद्ध नियोजकों और श्रीमती राजेश्वरी, कामगार द्वारा अशोक होटल कर्मचारी संघ के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक न्यायाधिकरण-सह-श्रम न्यायालय- II, नई दिल्ली पंचाट (संदर्भ संख्या 232/2018) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 13.08.2021 को प्राप्त हुआ था।

[सं. एल-42011/139/2018-आईआर-(डीयू)]

डी. के. हिमांशु, अवर सचिव

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 13th August, 2021

S.O. 583.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 232/2018) of the Central Government Industrial Tribunal-Cum-Labour Court-II, New Delhi, as shown in the Annexure, in the Industrial dispute between the employers in relation to The General Manager, Ashok Hotel, 50-B, Chanakyapuri, New Delhi and Smt. Rajeshwari, Worker Through Ashok Hotel Employees Union, which was received along with soft copy of the award by the Central Government on 13.08.2021.

[No. L-42011/139/2018-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI

Present: Smt. Pranita Mohanty, Presiding Officer, C.G.I.T.-Cum-Labour Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 232/2018

Date of Passing Award- 29th July, 2021

Between:

Smt. Rajeshwari,
Through:- Shri M. M. Gope, General Secretary,
Ashok Hotel Employees Union,
C-147-148, Staff Quarters,
Ashok Hotel, Chankyapuri ... Workman

Versus

The General Manager,
Ashok Hotel,
50-B, Chanakyapuri, New Delhi-110021. ...Management

Appearances:-

Shri Shashank Singh (A/R) : For the Workman.

None for the management (A/R) : For the Management

AWARD

The Government of India in Ministry of Labour & Employment has referred the present dispute existing between employer i.e. the management of Ashok Hotel, and its workman/claimant herein, under clause (d) of sub section (1)and sub section (2A) of section 10 of the Industrial Dispute Act 1947 vide letter No. L- 42011/139/2018 (IR(DU) dated 19/11/2018 to this tribunal for adjudication to the following effect.

> "Whether the workman Smt. Rajeshwari, Token No. 4777 is entitled for designation as Sr. Technician Grade-I w.e.f 10.03.2015 in scale of 9740-23870 through automatic elevation as per the rules of the corporation/management of Ashok Hotel, New Delhi? 2. Any other relief the workman is entitled to?"

As averred in the claim petition the claimant Rajeshwari Devi was appointed as a Technician Grade-II (Tailor) in the establishment of the management in the year 1997 and since then working to the satisfaction of the management leaving no scope for dissatisfaction. Her seniority has been maintained in the category of Technicians since the date of initial appointment as per the Rules of the Corporation. She was given automatically elevation to the post of Technician Grade-I w.e.f. 10.03.2002on completion of 5 years of satisfactory service to the employer. In this regard office order dated 10.06.2002 was communicated. She was also given merit increment in the cadre of Technician Grade-I after completion of 5 years of service in that grade by order dated 17.03.2007 and the higher pay scale was allowed to her. At this time also her seniority was considered by the management. Again he was given elevation to the post senior technician grade-III raising her pay from 4530-6455 to 8860-21700w.e.f 10.03.2007 as she completed 5 years of service in technician grade-I. Thereafter annual increment was allowed to her w.e.f 01.03.2007 wide order dated 17.03.2018. At that juncture the management realized that the merit increment given to her by order dated 17.03.2007 w.e.f 01.03.2007 is wrong and thus, withdrew the same by order dated 28.04.2008. Thereafter, the claimant/workman got for next automatic elevation w.e.f 10.03.2011 by order dated 26.04.2011raising her pay to the next level i.e. 09380 to 22950. All these were done according to the recommendation of the cadre review committee. Though the claimant was granted financial upgradation for cadre name remains unchanged. Being aggrieved she made request to the management for change of her designation and the management of Ashoka Hotel rectify the defect by order dated 17.03.2012 and she was designated as Senior Technician grade-II. But the management while granting next automatic elevation in the scale of 9740-23870 w.e.f 10.03.2015 by order dated 31.08.2015 described him as senior technician grade-III instead of senior technician Grade-II. She should have been designated as senior technician grade-I as per the rule when she got the automatic elevation in the pay scale of 9740 to 23870. Instead the management designated her as technician grade-Ii with scale 09380 to 22950 vide order dated 4316 being ignorant of the fact that she has already been granted the pay scale of 9740 to 23870 by order dated 31.08.2015 which is the scale of senior technician grade-I. This action of the management changing the designation of the workman was illegal arbitrary and in violation of the rules of the corporation. The grievance of the claimant was espoused by the Ashoka Hotel Employees Union and a resolution to that effect was passed in the meeting held on 18.05.2016. A demand notice was also served on the management for rectification of the mistake. Since no resolution could be arrived and a Industrial dispute was raised before the conciliation officer where the management partici0pated but did not accede to the demand of the claimant. The failure report being submitted by the conciliation officer, the appropriate government referred the matter to this tribunal for adjudication.

Though notice was served on the management they did not appear nor filed any WS and by order dated 06.01.2020 the management was set exparte.

The claimant examined herself as WW1 and filed a set of documents which have been marked in a series of WW1/1 to WW1/19. The documents include the orders passed by the management on different dates giving the benefit of automatic elevation with higher pay scale to the claimant. She has also filed the statement of claim filed before the conciliation officer.

The claimant in her affidavit has stated exactly in the line of the statement of the claim petition. Her oral evidence coupled with the document clearly shows that the management on completion of 5 years of service in one grade had allowed her automatic elevation to the next grade with the higher pay scale w.e.f 10.06.2002(exhibit WW1/2). Thereafter she was given merit increment in Technician Grade-II w.e.f 17.03.2007

again vide exhibit WW1/4 she was promoted to the cadre of Senior Technician Grade-III w.e.f 25.05.2007 and the pay scale was accordingly a revised. In March 2014 she was again given merit increment in Senior Technician Grade-II w.e.f 01.03.2014. But surprisingly on the recommendation of the Cadre Review Committee the management issued an order on 26.04.2011(exhibit WW1/8) in which without any rhyme and reason describe the claimant as Senior Technician Grade-III and again promoted to Senior Technician Grade-III fixing her pay to the higher grade. Here the description of the claimant should have been as Senior Technician Grade-II. On a later date i.e on 13th March 2013 while granting merit increment vide its order marked as exhibit WW1/10 and WW1/11 she was described as Senior Technician Grade-II and admissible pay scale was allowed. Not only that the claimant has filed another document marked as WW1/12 issued by the management on 17th March 2015 wherein the claimant has been described as Senior Technician Grade-II. But surprisingly on 31.08.2015 the management issued an order pursuant to the recommendation of the Cadre Review Committee wherein the claimant was describe as the Senior Technician Grade-III before automatic elevation and after the automatic elevation though her pay was fixed at the next higher level. Being aggrieved she made a representation to the management for correction of her cadre and by order dated 04th March, 2016 (Exhibit WW1/15) she was again describe as Senior Technician Grade-II. In 2015 she should have been described as Senior Technician Grade-I. This action of the management without any rhyme and reason appears to be illegal and amounts to unfair labour practice. Thus, from the unchallenged and uncontroverted oral and documentary evidence adduced by the claimant it is held that she is entitled for designation for Senior Technician Grade-I w.e.f 10.03.2015 in the scale of 9740 to 23870 and the management committed illegality by denying the said claim of the claimant. Hence, ordered.

ORDER

The reference be and the same is allowed in favour of the claimant. it is held that the claimant is entitled to the designation of senior technician grade-I and the attached pay scale of 9740 to 23870 w.e.f 10.03.2015. The management is directed to pass an order to that effect and pay the arrears in the said pay scale to the claimant till date within 3 months from the date when the award would become executable failing which the amounts so accrued shall carry interest @ 9% per annum from the date of accrual till the actual payment is made. Send a copy of this award to the appropriate government for notification as required under section 17 of the ID act 1947.

The reference is accordingly answered.

Dictated & Corrected by me.

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 13 अगस्त, 2021

का.आ. 584.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मुख्य महाप्रबंधक, दूरसंचार विभाग, भोपाल (म.प्र.); जिला दूरसंचार अभियंता, दूरसंचार, बालाघाट (म.प्र.) के प्रबंधतंत्र के संबद्ध नियोजकों और श्री ए.के. पटेल, कामगार के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण औद्योगिक विवाद में औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या CGIT/LC/R/05/2005) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 15.07.2021 को प्राप्त हुआ था।

[सं. एल- 40011/9/2004-आईआर-(डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 13th August, 2021

S.O. 584.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. CGIT/LC/R/05/2005) of the Central Government Industrial Tribunal cum Labour–Jabalpur, as shown in the Annexure, in the Industrial dispute between the employers in relation to The Chief General Manager,Deptt. of Telecommunication, Bhopal (M.P.); The District Telecome Engineer, Telecom Balaghat (M.P.) and Shri A.K.Patel, Worker which was received along with soft copy of the award by the Central Government on 15/07/2021.

[No. L- 40011/9/2004-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/5/2005

Present: P. K. Srivastava, H.J.S..(Retd)

Shri A. K. Patel
S/o Shri Badrinath Patel
C/o Shri S.V. Ranade,
Area Secretary,
All India Telecom Employees Union,
Class-3, MP Circle, 537, Anand Colony,
Rewa Town Charital, Jabalpur (M.P.) ... Workman

Versus

The Chief General Manager,
Dept. of Telecommunication
Hoshangabad Road, M.P. Circle
Bhopal (M.P.)-462001
The District Telecome Engineer,
Telecom
Balaghat (M.P.) ... Management

AWARD

(Passed on this 12th day of July 2021)

As per letter dated 25/11/2004 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No. L-40011/9/2004-IR(DU). The dispute under reference relates to:

> "***Whether the action of the management District Engineer Telecom, Balaghat /Chief General Manager, Telecom MP Circle in not regularising the services of Shri. A.K.Patel S/o Shri Badrinath Patel, casual labour (Driver) w.e.f. 2/3/93 and not giving him equal wages and other benefits at par with the regular employee is just and fair?. If not to what relief the workman is entitled .***"

1. After registering the case on the basis of reference, notices were sent to the parties. After registering the case, parties appeared and put up their claim/defense.

2. According to the statement of claim put up by the applicant/workman, he was initially appointed as casual labour driver w.e.f. 2-3-1993 and continuously worked as driver till 5-2-1994 under Department of Telephones, OFC Pariyojana, Jabalpur. Thereafter, he was transferred to T.D.E. Balaghat and worked as such for 10 years continuously without any break in service. He requested the Management from time to time to regularize his services as per Rules which was not considered. He raised the dispute before the concerned Assistant Labour Commissioner. During the pendency of the dispute, the Management terminated his services without any notice or compensation, which is in violation of Section 33 of the Industrial Disputes Act,1947 (hereinafter referred to as the word'Act')." After failure of conciliation, the appropriate Government made a reference to this Tribunal for Award. According to the case of the workman, though he worked regularly and continuously but he was not paid equal wages which was paid to the regular employees which is against law and arbitrary. He was entitled to be regularized as per Rules, which is not done. The action of the Management is arbitrary and against law. Accordingly, the workman has prayed that the reference be answered in his favour.

3. The case of the Management is that, the workman was never an employee of Management in any capacity, in fact he was engaged through contractor, hence there was no relation of workman and employer between the parties, thus there arises no question of his regularization and termination. Accordingly, the Management has prayed that the reference be answered against the workman.

4. The workman has filed and proved (Exhibit W-1) letter dated 1-12-2000 of Telecom District Engineer regarding the status of workman and other employees. (Exhibit W-2) is the letter dated 6-12-1999 regarding recruitment of Motor Divers. (Exhibit W-3) is the letter dated 14-8-2001, (Exhibit W-4) is the copy of driving license, (Exhibit W-5) is the Employment Exchange Registration Card and(Exhibit W-6 to W-12) is the log-book for the period 1997 to 2003. The workman has examined himself on oath as a witness and has been cross examined. He has also examined Shri S.V.Ranade, the Union Leader as witness on his behalf. The Management

has examined its witness but could not produce them for cross-examination, hence his witness stands discharged.

5. I have heard arguments of Aditya Ahiwasi, learned counsel for the Workman. None was present for the Management at the stage of argument. Management was given time to file written arguments, but they did not avail this opportunity also.

6. According to learned counsel for workman, it is not disputed that the workman worked with the Management. Management has only disputed his mode of appointment. According to the management, the workman was engaged through contractor. The Management does not disclose the name and details of contractor nor did they file any document in this respect. Whereas the case of the workman is that, he was engaged by the management itself, which he has proved by oral and documentary evidence. The workman has also proved his continuous engagement for 10 years and his entitlement for regularization. Hence, requested that the reference be answered in favour of the workman.

7. The following issues arise in the case in hand, for determination, in the light of material on record and arguments:-

1. ''Whether the workman was entitled to be considered for regularization?".

2. ''Whether the workman was entitled to equal wages and benefits at par with the regular employees?".

3. ''Whether the workman was entitled to any other benefit?".

8. **ISSUE NO.1;-**

9. The respective claim and defense of the parties has been elaborated earlier. The workman has stated that he was engaged as a casual driver with the department on 2-3-1993 and worked continuously for 10 years till 13-3-2004, hence he was entitled to be considered for regularization and to be absorbed against existing permanent vacancy. In his cross-examination, he has denied that he was engaged through a contractor. He admits that he did not appear for an interview for the post and also that he did not receive any formal appointment letter. The other witness, the Unions Representative has also corroborated the statement of the workman. He has proved Exhibits W-1 to W-2 and W-3. In cross-examination, he has stated that casual drivers were recruited if they fulfilled prescribed norms. There was no prescribed norms for engaging casual drivers.

10. As stated earlier, Exhibits W-1 is the copy of letter sent by District Telecom Engineer Balaghat to Assistant General manager on 1-12-2000 wherein the name of the present applicant/workman finds mentions as casual worker. This letter is in response to granting of temporary status to the casual workers. This letter falsifies the case of the management that the workman was engaged through a contractor. This fact is strengthened by the fact that Management has not disclosed the name of the contractor, whose worker was this applicant/workman and nor has the Management produced any documentary evidence in this respect, hence the fact that the workman was engaged by the Management itself is held proved, in the light of the aforesaid evidence.

11. Exhibit (W-2) is a letter sent by Deputy General Manager Administration to the Director TXI, Jabalpur regarding the vacancies of drivers to be fulfilled by outsiders and departmental staff in different Stations including Balaghat, where the workman was posted at that time. This shows that there were vacancies at Balaghat, required to be fulfilled by outsiders and the departmental staff (02 from outsiders and 03 from departmental staff) in the light of the notification dated 20-7-1999 Bharti-3-18/dra/Khand-5/5 for the purpose of appointment outsider quota means temporary and casual workers. This shows that there were vacancies in his quota as outsider at the station. There is nothing on record to say that the workman was given a chance to apply for the vacancies or he was ever considered against the vacancies in this quota. The Management was under legal obligation to do this. By not giving the workman an opportunity against the vacancies in his quota at the station, the workman has been deprived by the Management of his valuable legal rights.

12. In the light of the above findings, it is held that the workman was entitled to be considered for regularization because firstly he had completed 10 years of continuous engagement as a casual labour ,which has been so held in case of **Secretary State of Karnataka & Others Vs. Uma Devi & Others** (2006) 4 SCC 1. In another case **Basudeb Debnath Vs. State of Tripura**, WP(C) No.1162/2018, decided by Hon'ble High Court of Tripura(Division Bench), quoted by learned counsel for workman also supports the finding arrived at in this case because the facts are almost similar in both the cases. **Issue No.1 is answered accordingly.**

ISSUE NO.2:-

13. As regards the claim of equal pay for equal work, this claim is not sustainable because the workman was a casual labour and not a regular employee of the Management. It is supported by the principle of law laid down by Hon'ble Apex Court in the case **of State of Punjab and Others Vs. Jagjit Singh and Others** (2017) 1 SCC 148.

Issue No.2 is answered accordingly.

14. **ISSUE NO. 3:-**

In the light of findings recorded above, the workman is held entitled to be considered for regularization. He is held not entitled to equal pay at par with regular employee/drivers. **Issue No.3 is decided accordingly.**

15. On the basis of the above discussion, following award is passed:-

A. The action of the management District Engineer Telecom, Balaghat /Chief General Manager, Telecom MP Circle in not regularising the services of Shri. A.K.Patel S/o Shri Badrinath Patel, casual labour(Driver) w.e.f. 2/3/93 is held against law.

B. The action of the Management in not giving workman Shri A.K.Patel equal wages and other benefits at par with the regular employee is just and fair.

C. The workman is held entitled to be considered for regularization w.e.f. 2-3-1993.

D. No order as to costs.

16. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

P. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 13 अगस्त, 2021

का.आ. 585.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार महाप्रबंधक, अशोक होटल, 50-बी, चाणक्यपुरी, नई दिल्ली के प्रबंधतंत्र के संबद्ध नियोजकों और श्री सोनू कुमार, कामगार द्वारा अशोक होटल मजदूर जनता यूनियन, नई दिल्ली के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण औद्योगिक विवाद में औद्योगिक अधिकरण एवं श्रम न्यायालय-II नई दिल्ली के पंचाट (संदर्भ संख्या 177/2019) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 13.08.2021 को प्राप्त हुआ था।

[सं. एल-42025/07/2021-आईआर-(डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 13th August, 2021

S.O. 585.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 177/2019) of the Central Government Industrial Tribunal-Cum-Labour Court-II, New Delhi, as shown in the Annexure, in the Industrial dispute between the employers in relation to The General Manager, Ashok Hotel, 50-B, Chanakyapuri, New Delhi and Shri Sonu Kumar, Worker Through Ashok Hotel Mazdoor Janta Union New Delhi , which was received along with soft copy of the award by the Central Government on 13.08.2021.

[No. L-42025/07/2021-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI

Present: Smt. Pranita Mohanty, Presiding Officer, C.G.I.T.-Cum-Labour Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 177/2019

Date of Passing Award- 27th July, 2021

Between:

Shri Sonu Kumar,
S/o Shri Balram Singh,
Through- The president,
Ashok Hotel Mazdoor Janta Union,
C-47, Staff Quarters, Ashok Hotel, 50-B,
Chanakyapuri, New Delhi-110021 ... Workman

Versus

The General Manager,
Ashok Hotel,
50-B, Chanakyapuri, New Delhi-110021. ... Management

Appearances:-

Shri S.S Upadhaya (A/R) : For the Workman.

None for the management (A/R) : For the Management

AWARD

This is an application filed u/s 33A of the Id Act by the claimant who was the employee of the management of Ashok Hotel. The management was noticed for the purpose of hearing of the application. But for non appearance of the management it was set exparte by order dated 20.11.2019.

The claimant has stated that he was working for the management since 2010 continuously as a Lift Mechanic till he was illegally removed from service on 5th May 2019. It has further been stated that he is a member of Ashok hotel Mazdoor Janta Union and his grievance for non regularization was espoused through the Union. A dispute in this regard was raised before the Labour Commissioner where conciliation was taken up. Since the conciliation failed the matter of the claimant alongwith 14 others was referred to this tribunal by the Appropriate Government which is now pending being registered as Id No. 3/2018. The management in violation of the certified standing order of The Ashok Hotel Management was paying his salary through a contractor and even failed to deposit his PF Contribution in the PF Trust of Ashok Hotel. Being aggrieved by the action taken by the claimant and complaint made the management terminated the service of the claimant w.e.f 5th May 2019. The letters written by the claimant alleging illegal termination of service was not replied. The correspondence made by the President of Ashok Hotel Mazdoor Janta Union regarding his illegal termination were not replied too. Since, the action taken by the management has the effect of change of service condition of the claimant during the pendency of the Industrial Dispute, the claimant has prayed that direction be issued for his reinstatement into service with full back wages since the date of termination and not to change his service condition in any manner during the pendency of Id 3/2018 and other relief as would been fit.

As stated earlier the management became exparte and did not file any written statement. The claimant testified as WW1 and filed a series of document marked in a series of exhibit WW1/1 to WW1/9. In his sworn testimony the claimant has stated that before this tribunal Id No. 03/2018 is pending being filed by him and 15 others claiming regularization of their service with regular pay scale of their category and other reliefs. The Management is fully aware of the pendency of the Industrial dispute as it had participated in the conciliation proceeding before the Labour Commissioner and notice of the Industrial Dispute was served on it. Not only that the management is fully aware of the reference made by the Appropriate Government as the copy of the same was marked to them.

During course of argument the Ld. A/R for the claimant strenuously argued that when a reference is received from the Appropriate Government copies are sent to all the parties concerned which amounts to knowledge of the parties. In this case the management in a calculative move has intentionally omitted to appear in the proceeding which is nothing but its attempt to cover up the wrong done. He thereby argued for allowing the prayer made in the petition.

At the outset it may be mentioned that section 33 of the Industrial Dispute Act clearly provides that during the pendency of the proceeding either before the Conciliation Officer or Labour Court or industrial tribunal no employer shall alter or change the conditions of service of the workmen without written permission/approval from the authority before which such proceeding is pending. In case of contravention of the provisions of section 33 by any employer, aggrieved employee has been given a right to make a complaint in writing u/s 33A of the Act before the authority before whom such proceeding is pending or where pending at the time of retrenchment/ discharge etc of the workmen. Section 33A of the Act enjoins upon the Industrial Adjudicator a twin duty- the first is to find out as to whether the employer has contravened the provisions of section 33 and to answer the question as to whether the dismissal or such other punishment as may have been imposed upon the workman is justified in law.

It is manifest from the pleadings and the evidence adduced by the claimant/workman that he was appointed as a Lift Mechanic since the year 2010 and a dispute in form of Id No. 03/2018 claiming regularization of his service is pending before this tribunal. It has been pleaded and testified by the workman that the management on account of vindication terminated his service w.e.f 05th May 2019 without following the provisions of law laid u/s 25F, and 25-G of the ID Act. The claimant has also filed the order passed by the conciliation officer which clearly shows that the management had appeared before the Labour Commissioner and had ample knowledge about the reference made to this tribunal for adjudication. The management has not filed any pleading to justify the action taken. There is nothing on record to show that the management had conducted any domestic inquiry not related to dispute raised in Id 03/2018.

The law is well settled that the conditions contain in the proviso section 33 (2) (b) of the Act are mandatory in nature and non compliance of the same would render the order of dismissal void and inoperative. The same view has been taken by the Hon'ble Court in the case of **Indian Telephone Industries limited vs. Prbhakar .H Manyarae reported in 2003LLR 68**. In this case the management company has terminated the service of the workman without approval from the competent authority and without payment of wage as provided u/s 33(2)(b) of the Id Act which is illegal and void.

Now it is to be seen if the claimant is entitled to any incidental relief of payment of back wages and reinstatement into service. It is proved on record that the claimant was continuously in the employment of the management till his termination made on 05th May 2019. No showcause notice or charge sheet was issued to him by the management. The evidence on the contrary proves that the job of the workman is of perennial and regular nature. Provisions of section 33(2)(b) of the Act is all most akin to the provisions of section 25F, of the Id Act as both these provision have laid down certain conditions precedent to retrenchment-discharge of the workmen and requires the employer to give one month wage in lieu of the notice.

The Hon'ble Apex Court in case ***"Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya"*** reported as (2013) 10 SCC 324 held as under:-

The propositions which can be culled out from the aforementioned judgments are :

(i) In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.

(ii) Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the Court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then it has to plead and also lead cogent evidence to prove that the employee/workman was gainfully employed and was getting wages equal to the wages he/she wads drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averments about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments."

The Hon'ble Apex Court also held that "different expressions are used for describing the consequence of termination of a workman's service/employment/engagement by way of retrenchment without complying with the mandate of section 25F of the Act. Sometimes it has been termed as ab initio void, sometimes as illegal per se, sometimes as nullity and sometimes as non est. leaving aside the legal semantics, we have no hesitation to hold that termination of service of an employee by way of retrenchment without complying with the requirement of giving one month's notice or pay in lieu thereof and compensation in terms of section 25F (a) and (B) has the effect of rendering the action of the employer and nullity and the employee is entitled to continue in employment as if his service was not terminated". (Anoop Sharma vs. Executive Engineer, Public Health Division No.1 Panipat (2010) 5SCC 497.)

A bench of three judges of the Hon'ble Supreme Court in the case of **Hindustan Tin Works Private Limited vs. Employees of Hindustan Tin Works Private Limited (1979)2SCC 80** held that relief of reinstatement with continuity of service can be granted where termination of service is found to be invalid. It would mean that the employer has taken away illegally the right to work of the workman contrary to the relevant law or in breach of contract and simultaneously deprived the workman of his earnings. If the act of employer is found to be totally illegal and arbitrary, in that eventuality the workman is required to be reinstated, with full back wages. Plain common sense also dictates that the removal or an order terminating the services of workmen must ordinarily lead to the reinstatement of the services of the workmen alongwith payment of back wages.

Having regard to the legal position as discussed above and the fact that the claimant was performing duty to a post of regular and perennial in nature, this tribunal comes to hold that the claimant herein is entitled to reinstatement into service with 50% of back wage as termination of the claimant is found to be illegal and the claimant is not gainfully employed anywhere since the date of termination. Hence, ordered.

ORDER

The management is directed to reinstate him into service within 1 week from the date of the publication of the award and pay him the back wages as directed above within 2 weeks failing which the amount accrued shall carry interest @ 9% per annum from the date of termination and till the date of actual payment. Send a copy of this award to the appropriate government for notification as required under section 17 of the ID act 1947.

Dictated & Corrected by me.

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 13 अगस्त, 2021

का.आ. 586.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार कार्यपालक अभियंता, इलेक्ट्रिकल डिवीजन-11, सीपीडब्ल्यूडी आईएआरआई, पूसा, नई दिल्ली; मैसर्स गोगिया ब्रदर्स, सीजी-1/32/बी, विकासपुरी, नई दिल्ली; मैसर्स एबिलिटी इंजीनियर्स (इंडिया), 301/बी-6, लक्ष्मी कॉम्प्लेक्स, दिल्ली के प्रबंधतंत्र के संबद्ध नियोजकों और श्री धर्मबीर सिंह, कामगार व अन्य द्वारा अखिल भारतीय केंद्रीय लोक निर्माण विभाग (एमआरएम) कर्मचारी संगठन, के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण औद्योगिक विवाद में औद्योगिक अधिकरण एवं श्रम न्यायालय - II नई दिल्ली के पंचाट (संदर्भ संख्या 85/2014) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 13.08.2021 को प्राप्त हुआ था।

[सं. एल- 42025/07/2021-आईआर-(डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 13th August, 2021

S.O. 586.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 85/2014) of the Central Government Industrial Tribunal-Cum-Labour Court-II, New Delhi, as shown in the Annexure, in the Industrial dispute between the employers in relation to The Executive Engineer, Electrical Division-11, CPWD IARI, Pusa, New Delhi; M/s Gogia Brothers, CG-1/32/B, Vikaspuri, New Delhi; M/s. Ability Engineers (India) 301/B-6, Laxmi Complex, Delhi and Shri Dharambir Singh, Worker Through All India Central PWD (MRM) Karamchari Sangathan, which was received along with soft copy of the award by the Central Government on 13.08.2021.

[No. L-42025/07/2021-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI

Present: Smt. Pranita Mohanty, Presiding Officer, C.G.I.T.-Cum-Labour Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 85/2014

Date of Passing Award- 22nd July, 2021

Between:

Shri Dharambir Singh,
S/o Shri Ram Dhan
Shri Vijay Kumar,
S/o Jagpal, Lift Operators
As represented by:-
All India Central PWD (MRM) Karamchari Sangathan (Regd.)
Balbir Nagar Extension,
Shahdra, Delhi-1100032. ...Workmen

Versus

1. The Executive Engineer,
   Electrical Division-11, CPWD
   IARI, Pusa, New Delhi.
2. M/s. Gogia Brothers,
   CG-1/32/B, Vikaspuri,
   New Delhi-18
3. M/s. Ability Engineers (India)
   301/B-6, Laxmi Complex,
   Delhi-110092. ...Managements

Appearances:-

Shri Kailash (A/R) : For the Workmen.

Shri Atul Bhardwaj (A/R) : For the Management

AWARD

This is a claim petition filed directly by the claimants challenging illegal termination from service reinstatement with full back wages from the date of termination and regularization of their respective services w.e.f. the initial date of their appointment.

For adjudication it is necessary to describe the background facts leading to filing of the present application. The claimants Dharambir Singh and Vijay Kumar were working as Lift Operator in the premises of CPWD at the site KAB-2, IARI, PUSA New Delhi. Though they were engaged since the year 2003 and 2006 respectively the management No.1 abruptly brought their services to an end. Being aggrieved the claimants through the Union had made a complaint to the Labour Commissioner where steps were taken for conciliation. But no satisfactory conciliation could be arrived at. The Labour Commissioner with the the failure report recommended the matter to the appropriate government for reference to the Tribunal for adjudication of the dispute. But the Appropriate Government did not find justification for reference to the Labour Court. Being served with the order of the Appropriate Government the claimants felt aggrieved and approached the Hon'ble High Court of Delhi by filing a writ petition. The Hon'ble High Court while deciding the writ petition gave liberty to the claimants to approach the CGIT directly for redressal of their grievance. Hence the present claim petition.

In the claim petition it has been stated that claimant Dharambir and Vijay Kumar were working as Lift Operator under the management No.1 CPWD through contractors w.e.f 26.05.2003 and 06.01.2006 respectively. They were reporting for work at the site of KAB-2, IARI, PUSA New Delhi and discharging their duties under the supervision and control of the officials of CPWD. In the process they had put to 240 days of regular service in a calendar year w.e.f their initial date of joining as casual labourers till their termination and thereby they have acquired temporary status. During this period though the contractors changed hands the claimant continued to work in the aforesaid site continuously and without any break. But suddenly the CPWD terminated their service w.e.f 23.05.2009 and at the time of termination no notice, notice pay in lieu of notice, retrenchment compensation were paid which makes the alleged termination illegal. Prior to that respondent

No.3 M/s Ability Engineers and prior to him respondent no. 2 M/s Gogia Brothers were inducted as contractors. Respondent No.3 was awarded the contract on 01.11.2008 but for some anomalies in the tender with regard to the minimum wages to be paid to the workmen, the contractor abandoned the contract. But the workmen engaged by him including the present claimants continued to work without payment of their wages till May 2009. The claimants time and again approached the Principal Employer i.e. CPWD and the Deputy Labour Commissioner for payment of their wages for the aforesaid period. For the interference of the Deputy Labour commissioner, the Principal Employer CPWD on 22.05.2009 made payment of the arrear wage of the claimants. But unfortunately the said principal Employer CPWD terminated their service w.e.f 23.05.2009 illegally and no termination notice, notice pay, or retrenchment compensation was paid as mandated under the ID Act. Being aggrieved the claimants through the Union approached the Labour Commissioner where conciliation was taken up but failed. The Labour Commissioner intimated the Appropriate Government for reference of the matter to the Labour Court for adjudication. But the Appropriate Government did not find any justification for reference. Finding no other way the claimants filed WPC No. 5390 of 2014 before the Hon'ble High Court of Delhi requesting issue of direction to the Appropriate Government to refer the Industrial Dispute to the industrial tribunal cum Labour Court. The Hon'ble High Court while disposing the writ petition directed for filing of the claim petition in the Labour Court directly. The claimants have further stated that they were working under the direct supervision and control of the respondent No.1 and as such they are the employees of CPWD and the engagement of the contractor was sham. They have further stated that neither the CPWD has the authority of engaging contractual workers nor the contractor has been registered under the Contract Labour (Regulation and Abolition Act). The other stand taken by the claimant is that by working for more than 240 days in a calendar year they had acquired the status of temporary employee. The Management CPWD subjected them to unfair labour practice by not regularizing their service though it had several vacancies in the post of Lift Operators and the claimants had all the requisite qualification and experience for the post. Thus, they have claimed for reinstatement with back wages and regularization of their service since the date of their initial engagement.

All the 3 respondents were noticed. Managements No.1 CPWD entered appearance and filed WS. Since, the other 2 respondents did not appear, by order dated 05.01.2017 both respondent No. 2 and3 were set exparte.

Respondent No.1 in the WS has challenged the maintainability of the proceeding. It has also denied the employer and employee relationship between the management and the claimants. While denying the claim that the claimants were engaged by the management no. 1, working under its supervision and control, getting remuneration directly from management No.1, it has been stated that CPWD in order to execute its function at different sites invites tenders through the approved Codal Process. The highest bidder is awarded the contract with proper terms of the contract for a specific period. The said contractor in order to execute the work specified under the contract engages its own manpower who are its employees having no relationship of employment with CPWD. The present claimants were engaged by one such contractor who during the period of contract abandoned the work. Since the contractor failed to pay the wage to the claimants and fled away from the work site these claimants raised a complaint before the Deputy Labour Commissioner. Being directed by the Deputy Labour Commissioner CPWD paid the arrear wage of these 2 workmen upto 22.05.2009 and asked them not to report for work from 23.05.2009. The amount so paid to the claimants towards their arrear wage was later on recovered from the contractor named M/s Ability Engineers India vide voucher no. 54 dated 19.06.2009. These payment made by CPWD as an interim arrangement till recovery of the same from the contractor cannot be construed as payment of wage by CPWD as the Principal Employer to the claimants. The Management No.1 has specifically denied the claim of the claimants that they were working under the supervision and control of the management, getting remuneration from it and for working 240 days in a calendar year had acquired temporary status. Citing the judgment of Hon'ble Apex Court in the case of State of **Karnatak vs. Uma Devi and others 2006 (4)SCC 1** he submitted that regularization of service of these claimants against any vacant post would stand opposed to the policy of equal opportunity in public employment which is a mandate of the constitution. The Management has thus, pleaded for dismissal of the claim as not maintainable and has specifically denied the employer and employee relationship between the management no.1 and the claimants.

The claimants filed their rejoinder denying the stand taken by the management NO.1 and reiterating the stand taken by them in the claim petition.

On the rival pleadings the following issues were framed for consideration.

ISSUES

1. Whether Industrial Dispute is maintainable? If so its effect?
2. Whether termination dated 23.05.2009 of Shri Dharambir and Shri Vijay Kumar are illegal termination? If so its effect?

3. Whether workmen Shri Dharambir and Shri Vijay Kumar are entitled for relief of re-instatement of their service.

4. Whether workmen Shri Dharambir and Shri Vijay Kumar are entitled for regularization in their respective service w.e.f the initial date of their appointment?

5. Whether workmen Shri Dharambir and Shri Vijay Kumar are entitled to any other relief?

The claimants examined themselves as WW1and WW2. They also filed several documents marked in the series of WW1/1 to WW1/7.Similarly the management examined one of its officer as MW1 who proved several documents marked in a series of MW1/1 to MW1/13. The documents filed by the claimants include the attendance sheet the photocopy of the comparative statement of the overtime allowance the order passed by the authority under the Minimum Wages Act, photocopy of the report of the Local Commissioner appointed in another case Numbered as LCA 44/2004, photocopy of cheques showing payment of the remuneration to the claimants and photocopy of the account payee cheque issued by the CPWD towards the payment of arrear wage as directed by the Deputy Labour Commissioner, a photocopy of the correspondence made by the examination cell of ICAR to the JE of CPWD requesting to keep the lift functional on Sundays for carrying the question paper for All India Examination. Similarly on behalf of the management photocopy of the order passed by the authority under the minimum wages Act, the calculation sheet of the overtime allowances of the claimants, photocopy of the agreement entered between the CPWD and the contractors through whom the claimants were allegedly engaged has been filed to prove that these claimant were engaged by the contractor as its employees.

At the outset of the argument the Ld. A/R for the management No.1 strenuously argued that the claimants were never directly appointed by the management and as per their own admission in the claim petition they were initially engaged through the contractor. They have also pleaded that they continued to work continuously though the contractors changed hands. It is also not disputed that these claimants were getting remuneration from the contractor. A single instance of payment of arrear wages by CPWD under the direction of the Labour Commissioner and subsequent recovery of the same from the contractor shall not establish the relationship between employer and employee between the parties. He relied on a number of judgments viz. **workman vs. Coates of India Ltd. (2004) 3SCC547; Haldia Refinery Canteen Employees Union vs. Indian Oil Corporation Ltd;(2005) SCC51; Balwant Rai Saluja vs. Air India Ltd (2014) 9SCC 407; Dhrangadhra Chemical Works Ltd. Versus State of Saurashtra, AIR 1957SC 274; Ram Singh vs. Union Territory, Chandigarh (2004) 1SCC 126; Workman of Nilgiri Coop Marketing Society vs. State of Tamilnadu (2004) 3SCC 4514; State of Karnatka versus Uma Devi and others 2006(4)SCC1** to buttress his submission that if the contract is for supply of labour, necessarily the labour supplied by the contractor will work under the directions, supervision and control of the Principal employer but that would not make the worker a direct employee of the principal employer, if the salary is paid by a contractor.

Before examining and assessing the evidence adduced by the parties it is necessary to observe that, there is no dispute on the preposition of law that the effective control test and organization test are not the only factors which can be said to be decisive for the employer employee relationship. With a view to elicit the answer, with regard to employer and employee relationship, the Court/Tribunal is required to consider several factors vis-à-vis who is the appointing authority, who is the paymaster, who can dismiss; how long alternative service lasts, the extent and control of supervision; the nature of job- professional or skilled work etc. etc, which would have a bearing on the issue in dispute. For that purpose it is required to consider the evidence adduced on record by the parties to the dispute.

FINDINGS

ISSUE No. 2 and 3

These 2 issues being interlinked have been taken up for consideration together. The Ld. A/R for the claimants while pointing to the evidence of the claimants as well as the evidence of the management witness argued that management no.1 has not raised any dispute on the fact that the claimant Dharambir and Vijay Kumar were engaged for work in the premises of management no.1 w.e.f 26.05.2003 and 06.01.2006 respectively. It is the stand taken by the claimants that they had worked for 240 days continuously in a calendar year and thereby entitled to be conferred with temporary status. To support their stand the claimants have filed photocopy of the attendance register marked as Exhibit WW1/1(colly). The attendance registers relate to the period December 2008 to May 2009. On the basis of these the claimants have stated that the document proves 240 days of work done continuously in a calendar year in the premises of CPWD. But on behalf of the management objection has been raised on the credibility of these documents. It is a settled position of law that the onus to prove that the claimants were in the employment of the management is always on the workmen and it is for them to adduce evidence to prove the factum of their employment with the management. Such evidence may be in form of receipt of salary or evidence with regard to 240 days of work or document of employment etc. In this case no document of employment has been placed on record. On the contrary the claimants have relied upon the photocopy of the attendance register and payment of arrear wage by the management and report

of the local commissioner deputed in LC No. 44/2004. On the strength of these documents the claimants have argued that these documents created during an undisputed point of time clearly prove that the claimants were working in the premises of the CPWD and had worked for more than 240l days in a calendar year and getting remuneration from them. Thus, there existed employer employee relationship between them. The workmen have filed affidavit stating that they were engaged directly by the management for discharge of duty as Lift Operator which is perennial in nature. To support the stand a document has been filed containing the list of Lift Operator working across India for CPWD and the vacancies in the post. But the management has strongly objected to the stand taken by the claimant and submitted that as per their own admission the claimants were engaged by the contractor who was under the obligation of executing the work assigned to him under contract. The Ld. A/R for the management pointed out the pleadings of the claimants and photocopies of the cheques filed by the claimants which clearly show that they were getting remuneration from the contractors. The Ld. A/R for the respondent thereby disputed the stand of the claimants that the management is not authorized to engage contract labours. The clear stand taken by the management is that these claimants were never engaged as Contract Labours by the management No.1. It is necessary to observe here that the photocopies of the attendance register filed by the claimant nowhere contain the signature or seal of the officials of CPWD. The chronologically maintained order sheet of the proceeding nowhere shows that the original attendance register was called from the office of the management No.1 by the claimants. Thus, it is held that by relying on the attendance register which has no authentication by management No.1 it cannot be concluded that there existed employer and employee relationship between the management and the claimants.

In the case of **Steel Authority of India vs. National Union Waterfront Worker Union reported in (2001) 7SCC Page 1**, the Hon'ble Apex Court have also prescribed for the effective control test to ascertain about the relationship of the workman with the management or the contractor. Not only that in the case of **Chintaman Rao vs. State of MP (1958(II)LLJ252)** the Apex court ruled that the concept of employment involves 3 ingredients (i)Employer (ii) Employee (iii) Contract of Employment. The employer is one who employees or engages the service of other person. The employee is one who works for another for hire. The employment is the contract of service between the employer and employee, where under the employee agrees to serve the employer subject to his control and supervision. In the case of **workman of Food Corporation of India vs. Food Corporation of India** reported in **(1985(ii) LLJ4)** the Hon'ble Apex Court pronounced that the contract of employment always discloses a relationship of command and obedience between them. Where a contractor emplyoes a workman to do the work which he contracted with a third person to accomplish, the workman of the contractor would not become more than the workman of the third person.

Not only that in the case of **Shankar Balajiwale reported in 1962(1) LLJ 119** the Hon'ble Supreme court have clarified that the control of the management which is a necessary element of the relationship of master of servant is not directed towards providing or dictating the nature of the article to be produced or work to be done, but refers to other incident having bearing on the process of the work the person carries out. The manner of work is to be distinguished from the type of work to be performed. In the case of **Ram Singh and Others vs. Union Territory Chandigarh and Others (2004)1 SCC 126** the Hon'ble Apex Court have elaborately discussed the factors to be considered for determining the employer employee relationship and the factors include control, integration power of appointment, liability to pay, liability to organize work etc. Thus, from the above analysis of the Principle of Law, it emerges that the effective control is a test to determine the employer employee relationship between the parties.

With regard to the case in hand except the attendance register, cheques showing payment of the arrear wage by the management CPWD no other evidence has been placed to rebut the stand of the management that the claimants are not its employees. The management witness examined as MW1 has clearly denied the stand of the claimants as its employees. By filing the photocopy of the order of the Labour Commissioner directing payment of arrear wages to the claimants he has explained that one contract was awarded to the contractor M/s Ability Engineers by whom these claimants were engaged. This has not been disputed by the claimants. It is the further stand of the management taken through its witness that the said contractor Ability Engineer had some dispute with regard to the minimum wage payable to the persons engaged by it. A complaint was raised before the authority under the Minimum Wages Act and as directed by the said authority a calculation of the differential wage and overtime wage were made. Since, the contractor abandoned the work when the contract was still in force, these claimants again approached the Labour Commissioner who directed the CPWD to make payment of arrear wage to the claimant and recover the same from the contractor. In compliance thereto, the arrear was paid to the claimants and the amount was recovered from the contractor under a voucher. That singular instance cannot establish the employer employee relationship between the parties. The circumstances under which the arrear was paid cannot in any manner prove the employer and employee relationship between the parties. All these circumstances and evidence lead this tribunal to draw the inference that pursuant to an agreement executed between CPWD and the contractor to execute a particular kind of work and for a particular time span the said contractor had engaged the claimants. Though the contractors were changed these claimants continued to work under the new contractor may be on account of their experience and expertise. That would not make the claimants employees of CPWD nor confer any status of temporary employees.

It is the specific stand of the claimants that their service was illegally terminated as no termination notice, notice pay or compensation was paid, that being unfair labour practice meted to them, their entitled to reinstatement into service with full back wages. This stand taken by the claimant doesn't sound convincing in view of the finding given in the preceding paragraph denying the employer and employee relationship between the claimants and the management CPWD. From the evidence and circumstances it is evidently clear that being ordered by the Labour Commissioner as a temporary redressal measure CPWD had paid the arrear wages to the claimants on 22.05.2009 and from the next date they stood disengaged on account of the abandonment of the contract by the contractor. This cannot be described as illegal termination entitling the claimants for reinstatement with back wages and compensation. These two issues are accordingly answered against the claimants.

ISSUE No.1 , 4 and 5

The claim has been filed to adjudicate with regard to the justification of management no.1 in not regularizing the service of these two workmen though there are vacancies in the post of Lift Operator. The reply of management no.1 in this regard is that there are no such vacancy and these claimants not being the temporary status employee of CPWD there is no scope for their regularization. Now it is to be seen if the claim for regularization is proper and justified.

The claimants examined as WW1 and WW2 have stated under oath that they were working as daily wager continuously since the date of their initial engagement. Despite repeated demand the management failed to regularize their service against the existing vacancies. As discussed in the preceding paragraph the claimants have failed to discharge their burden of establishing the employer and employee relationship between the CPWD and them. It has also been held that singular instance of payment of wage under a different circumstance cannot establish the employer and employee relationship. In the case of **Secretary State of Karnatak and others vs. Uma Devi** and others referred supra the Hon'ble Supreme Court have held that the persons who were appointed on temporary and casual basis without following proper procedure cannot claim absorption or regularization since the same is opposed to the policy of public employment. Here is a case where the evidence on record has not proved the appointment of the claimants by management No.1 CPWD on temporary or causal basis. There being no evidence or slender proofs with regard to the employer and employee relationship the prayer of the claimant for regularization of service is held without merit and cannot be allowed. These issues are accordingly answered against the claimants. Hence, ordered.

ORDER

The claim be and the same is dismissed on contest. Consign the record as per Rule. Send a copy of this award to the appropriate government for notification as required under section 17 of the ID act 1947.

The reference is accordingly answered.

Dictated & Corrected by me.

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 13 अगस्त, 2021

का.आ. 587.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारत संघ, रक्षा मंत्रालय, साउथ ब्लॉक नई दिल्ली ; महानिदेशक, सेना सेवा कोर (एएससी), सेना भवन, पीओ दिल्ली मुख्यालय, नई दिल्ली ; कमांडेंट 210 एफ.ओ.एल. डिपो, एएससी, दिल्ली कैंट, नई दिल्ली के प्रबंधतंत्र के संबद्ध नियोजकों और श्री टीटू राम, कामगार व अन्य 39 द्वारा हिंदुस्तान इंजीनियरिंग एंड जनरल मजदूर यूनियन के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण औद्योगिक विवाद में औद्योगिक अधिकरण एवं श्रम न्यायालय, नई दिल्ली-II के पंचाट (संदर्भ संख्या 71/2013) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 13.08.2021 को प्राप्त हुआ था।

[सं. एल-14011/02/2013-आईआर-(डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 13th August, 2021

S.O. 587.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 71/2013) of the Central Government Industrial Tribunal-cum Labour Court-II, New Delhi, as shown in the Annexure, in the Industrial dispute between the employers in relation to The Union of India, Ministry of Defence, South Block New Delhi; The Director General, Army Services Corps. (ASC), Sena Bhawan, PO Delhi Headquarter,New Delhi ; The Commandant, 210, F.O.L. Depot, ASC, Delhi Cantt., New Delhi.and Shri Titu Ram, and 39 others Worker Through Hindustan Engineering & General Mazdoor Union, which was received along with soft copy of the award by the Central Government on 13.08.2021.

[No. L-14011/02/2013-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI

Present: Smt. Pranita Mohanty, Presiding Officer, C.G.I.T.-Cum-Labour

Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 71/2013

Date of Passing Award- 9th July, 2021

Between:

Shri Titu Ram &39 others,
Through Hindustan Engineering & General,
Mazdoor Union (Regd. 4479) Head Office,
D-2/24, Sultanpuri,
Delhi. ... Workmen

Versus

1. Union of India
   Ministry of Defence, South Block
   New Delhi-1.
2. The Director General
   Army Services Corps. (ASC)
   Sena Bhawan, PO Delhi Headquarter,
   New Delhi-11.
3. The Commandant
   210 F.O.L. Depot, ASC,
   Delhi Cantt.,
   New Delhi. ... Managements

Appearances:-

Shri Kailash (A/R) : For the Workmen.

Shri Atul Bhardwaj (A/R) : For the Management

AWARD

The Government of India in Ministry of Labour & Employment has referred the present dispute existing between employer i.e. the management of Army Services Corps. (ASC), and its workman/claimant herein, under clause (d) of sub section (1)and sub section (2A) of section 10 of the Industrial Dispute Act 1947 vide letter No. L- 14011/02/2013 (IR(DU) dated 27.05.2013 to this tribunal for adjudication to the following effect.

> "Whether Shri Titu Ram and 39 other workmen are entitled to be regularized in the employment of office of commandant, 210 FOL Dept Delhi Cantt., New Delhi? What relief the workmen are entitled to and from which date?''

As per the claim statement the claimants represented by Hindustan Engineering and General Mazdoor Union of India are under the employment of the management for a long period from the date mentioned against each of them as per list enclosed to the claim petition. These workmen are working continuously and regularly with the management till date since the date of their initial joining. Time and again they were demanding

regularization of their service against the vacant post but the management never paid any heed to their request. All the workmen have worked continuously for more than 240 days in a calendar year and thereby acquired temporary status. Being disheartened by the inaction of the management in regularizing the claimants, they approached the Central Administrative Tribunal by filing cases numbered as 2053 of 99 and 2051 of 99. After hearing the matter the Hon'ble CAT passed order directing the management to regularize the service of these workmen against the permanent vacancies as and when the same will occur giving an upper time limit of 6 months. Pursuant thereto, the General Secretary of Union representing the workmen served a demand notice on the management for execution of the order passed by the Hon'ble CAT alongwith other demands relating to service benefits to which the claimants/workmen are entitled to. Since the management failed to fulfill the demand the claimants through their union approached the Labour Commissioner. The Labour Commissioner, though initiated a conciliation proceeding, the same could not achieve any fruitful result and the appropriate government referred the matter to this tribunal for adjudication in terms of the reference. The claimants have expressed their grievance to the effect that several demand were raised before the Labour Commissioner but the reference has been made for regularization of service only. However, the claimants have prayed that the management be directed to regularize the workmen/claimants and to extend all the service benefits granted to the regular employees together with any other relief as would deem fit.

The management being noticed appeared and filed written statement denying the claim of the workmen for regularization of their service. The maintainability of the proceeding has been challenged on the ground that FLO depot is a department is a Ministry of Defence engaged in discharge of sovereign function of the state. It is not an industry to be covered under the Industrial Dispute Act. It has further been stated that the order passed by the Hon'ble CAT directing regularization of service of these casual labourers as per the availability of vacancy in group-D post has been set aside by the Hon'ble High Court of Delhi by its order dated 24.10.2007 passed in WP(C) No. 8146 of 2006. Citing the judgment of the Hon'ble Supreme Court passed in the case of state of Karnatak vs. Uma Devi the respondent has stated that any relief for regularization of service would amount to back door entry and opposed to the constitutional mandate for equal opportunity to public employment. So far as the claim of these claimants are concerned it has been stated that FLO depot ASC Delhi Cantonment is the Unit responsible for provision, storage and issue of fuel to all the establishment of the Army, Airforce, Navy in Delhi NCR. This depot engages casual laboures for execution of the work intermittently and according to the need and thus the persons so engaged cannot be treated as permanent labours or Industrial Mazdoor. These Labours are usually hired for casual, seasonal or intermittent nature of work and never asked to work full time as per the instruction contained in DOPT OM NO. 49014/2/86 ESST. (c) dated 7.6.1988 on the subject. It has also been stated that the Government of India vide DOPT OM NO. 51016/2190-ESST. (c) dated 10.09.1993 had launched a scheme called "Casual labourers (grant of temporary status and regularization) scheme of government of India 1993" to regularize the persons working for more than one year against the erstwhile group-D post. As per the said scheme, persons who were in the employment on the date of issue of this memorandum and who had rendered continuous service of at least one year or have been engaged for at least 240 days in a year shall be deemed to have acquired temporary status but shall not be brought on the permanent establishment unless they are selected through regular selection process for Group-D post. The scheme also provided that the casual labours with temporary status shall be adjusted through the selection process against two out of three vacancies in the said Group-D post. Again the DOPT by its office memorandum no. 40011/6/2002 dated 06.06.2002 clarified that conferment of temporary status under the 1993 scheme was a onetime exercise and cannot be applied to casual labouers not meeting the prescribed conditions as on 01.09.1993. Thus, Titu Ram and 39 others who are the claimants in this proceeding having not been engaged against authorized post and working on the daily wages only, as and when required, cannot be conferred temporary status and get the benefit as claimed by them. The management has specifically denied that 74 Post in Group-D category as claimed by the claimants are not lying vacant since 01.02.2009. Thereby the management has prayed for dismissal of the claim as not maintainable.

The claimants filed rejoinder supported by series of documents refutting the stand taken by the respondent. In the rejoinder it has been stated that the respondent had made internal correspondence seeking approval for regularization of these claimants against 74 permanent Group-D posts lying vacant. They are working under the direct supervision and control of the respondent and at no point of time their service was disengaged. Thus, the nature of work discharged by them is perennial and they have been subjected to unfair labour practice on account of denial of regularization.

On the rival pleadings the following issues were framed for adjudication.

ISSUES

1. Whether the Titu ram and 39 others are entitled to regularize in the employment in the office of the commandant in FLO Depot Delhi Cantonment. If so, what is the effect?

2. What relief the workmen are entitled to and from which date.

On behalf of the claimants an application was moved u/s 11(3) of the ID Act for a direction to the management for production of document. The same was allowed and the management was directed to produce the document. But the management through it's A/R expressed inability to produce the documents on the ground that those are not in possession of the management. Thus, this tribunal by order dated 17.12.2015 permitted the claimants to adduce secondary evidence.

On behalf of the claimants all the claimants testified as witnesses described as WW1 to WW39 including the secretary of the Union who had testified about the espousal. Besides the oral evidence, they also proved document which included their identity card and other documents relating to the demand raised by them, order of the Hon'ble CAT, order of the Hon'ble High Court of Delhi, some internal correspondence between the Director General and other officials of the respondent, the office memorandum of DOPT, documents relating to regularization of some persons junior to these claimants pursuant to the direction of the Hon'ble CAT and the decision rendered by the Hon'ble High Court of Delhi, marked in the series of Exhibit WW1/1 to WW1/32. Similarly the management examined Captain Pranshu Singh administrative officer as MW1 who also proved few documents marked in a series of Exhibit MW1/1 to MW1/5. During cross examination of management witness some other documents were confronted to him by the claimants and marked as MW1-W1 to MW1-W3. Both the parties cross examined the witnesses of their adversaries.

During course of argument the Ld. A/R appearing for the management strenuously argued that the claimants were never appointed against permanent sanctioned post and as per the OM issued by the department of DOPT dated 10.09.1993 persons working for more than one year on the date of issue of the aforesaid memorandum are eligible for conferment of temporary status. Such conferment shall not make them automatically regular as the DOPT has further instructed in the OM that again two out of three permanent vacancies the temporary employees shall be regularized subject to fulfillment of eligibility criteria. The DOPT again by OM dated 06.06.2002 have clarified that the scheme of 1993 was for one time exercise and cannot be applied to casual labours not meeting prescribed condition as on 01.09.1993. He also advanced argument citing the judgment of **state of Karnatak vs. Uma Devi (2006)4 SCC1) and Surender Prasad Tiwari vs. U.P Rajya Krishi Udpadan Mandi Parishad (Appeal-Civil 3981 of 2006)** to the effect that the claimants have no cause of action for filing the present claim application as it is a settled law that a person who is engaged as casual labour cannot claim any right either for regularization or for parity with the other regular employees. Pointing out to the claim petition the Ld. A/R also submitted that many of the claimants of this proceeding have been engaged after 1993 and as such the benefit of casual workers regularization scheme of 1993 is not available to them as decided by the Hon'ble Supreme Court and the Hon'ble High Court of Delhi clarifying that the scheme of 1993 aims at formulating one time measure for regularization of casual employees. He thereby argued for dismissal of the claim as not maintainable and emphasized that the benefit for regularization granted by the Central Administrative Tribunal in OA No. 1003 of 2004 having been set aside by the Hon'ble High Court of Delhi the present proceeding is hit by the Principal of constructive res judicata.

The Ld. A/R for the claimants counter argued that the observation of the Apex Court made in the case of Uma Devi referred supra has no applicability to the Labour cases as decided by the Hon'ble Supreme Court in several subsequent judgments. He also submitted that these claimants are working for continuous period ranging from 39 to 10 years and have worked for 240 days or more in a calendar year. None regularization of their service by the respondent amounts to unfair labour practice and on that ground alone they are entitled to the benefit sought for in this petition. From the pleadings and the evidence adduced by the parties there is no dispute on fact that the claimants are working for the respondent continuously for pretty long time and some of them started working since 1982 and others on different years between 1982 to 2010. There is also no dispute that the claimants are working for the respondent during the pendency of this proceeding. Thus from the evidence it is to be adjudicated if the claimants are entitled to the relief of regularization.

FINDINGS

ISSUE NO.1

The stand of the management is that the claim advanced before this tribunal is baseless and rests upon a misconception of fact. The Ld. A/R for the management argued that heavy burden lies on the claimants to prove their relationship with the respondent as its employee. These workmen were neither given appointment by the respondent nor they are in its pay roll. Their engagement being purely need based, no muster roll, salary register etc were ever maintained for them. They were given wage for the work done and a record is maintained for the account of the wage paid which cannot be considered at par with the salary register. On behalf of the claimants 39 persons testified and all of them stated exactly in the line of the pleading made in the claim statement. The totality of the evidence adduced by the claimants lead to a conclusion that they are working continuously for more than 20-10 years. There is no dispute about the proposition of law that onus to prove that the claimants are in the employment of the respondent is always on the workmen and it is for them to adduce evidence to prove the factum of their employment with the management. Such evidence may be in form of receipt of salary or evidence with regard to 240 days of work or documents of employment etc. The tribunal has to consider the oral as well as the documentary evidence placed on record by both the parties.

The workmen have filed affidavit stating that they were engaged through the Employment Exchange for discharge of different kind of work which are perennial in nature and they are continuing in the work as such. They have specifically denied the stand of the respondent that their engagement was intermittent and need based. In their oral testimony the claimants as witnesses have further stated that they are working directly under the supervision and control of the officials of the respondent. Some documents to prove the same have been filed. The claimants have also stated that they are receiving remuneration from the respondent directly. The respondent being a department of the Ministry of Defence maintains high standard of confidentiality and the documents relating to their claim are not within their reach. Though a prayer was made for production of the documents the respondent failed to do so and the claimants have adduced whatever secondary evidence they had to prove their stand. Perusal of the record shows that the claimants had filed a petition invoking the provisions of section 11(3) of the Id Act calling upon the respondent to file the documents like Muster roll from 1982 to 2015, wage record for 1982 to 2015, leave book and leave register, the payment vouchers containing signature of the claimants during the period from 1982 to 2015 etc. But the management refused to produce the documents on the ground that same are not available. Thus leave was granted to the claimants for production of secondary evidence. Pursuant there to the claimants produced the documents which are in the nature of letter written by the administrative officer of the respondent calling the workman through registered post to report for duties. Photocopy of the wage register of the casual labours for some period in respect of which claim is pending photocopy of the attendance register of the daily wage worker, a register showing payment of the arrear of wage on revised rate to the casual labours for some periods in respect of which the dispute is pending. All the witnesses examined on behalf of the claimants spoke before the tribunal in clear term that they are working continuously without any break and as such they have worked for more than 240 days in a calendar year which confers temporary status on them automatically. But the respondent exercised unfair labour practice by denying their regularization. They have further stated that while working, they are performing duty for 26 days or more in a month which is inclusive of Sundays. But the respondent has not extended the benefit of casual leave or facilities of gazetted holiday to them. This stand of the claimant has been denied all along by the respondent.

The administrative officer of the respondent while testifying as MW1 spoke in clear terms that the nature of work done by the claimant is not perennial nor they ever worked for more than 19 days in a month. Thus, their claim of work for 240 days or more in a calendar year is nothing but a misconception of fact. MW1 Captain Priyanshu Singh was cross examined at length by the claimants who during cross examination admitted that the workmen of this proceeding are still working and their attendance are being marked regularly. He also admitted about obtaining the signature of the workmen for disbursement of their salary. When asked about the date of appointment of individual workmen as mentioned in the claim statement he expressed his ignorance about the same unless the record is verified. He was also confronted with the photocopy of certain documents marked as exhibit MW1/W1and MW1/W2. He admitted that these are the documents sent to some of the workmen by the respondent for joining their duty. Thus he was asked to produce the documents on the next date of cross examination. Accordingly on the next date of examination when he was asked about the document he failed to produce the same but admitted that the claimants are working and continuing their work under the supervision and control of the administrative officer and officer in command of the depot. He further admitted that the attendance of these workmen are being recorded in the RND section and the workmen are paid remuneration after audit of their attendance by the local area accounts office. Thus from this admission of MW1 coupled with the photocopies of the documents like attendance register wage register etc. it is proved beyond doubt that the claimants are under the continuous employment of the respondent working under their supervision and control and getting remuneration from them, which in turn proves the employer and employee relationship between the respondent and the claimants.

The facts on record clearly proves that they are working continuously and for years together and have completed working for more than 240 days in a calendar year. It is their specific stand that they are working for about 26 days in a month. But the witness for the management in his oral testimony submitted that the claimants have hardly worked for 19 days in a month which comes to 228 days in a calendar year. As per the memorandum issued by the DOPT a person in order to acquire temporary status is required to work for 240 days in a calendar year inclusive of 4 days weekly off in a month and 18 days gazetted holidays in a year. Thus, the statement of MW1 about 19 days work done by the claimants in a month when added to the weekly off days and gazetted holidays comes to 294 days in a year. The tribunal has no hesitation in accepting the oral testimony of the claimants with regard to their claim for 240 days of work in a calendar year since the management despite direction had failed to produce the muster roll and the attendance register though MW1 has categorically admitted during cross examination about maintenance of those registers.

In the case of Steel Authority of India vs. National Union Waterfront Workers Union reported in (2001)7SCC Page1 the Hon'ble Apex Court have prescribed for Effective Control Test to ascertain about the relationship of the workmen with the management. In this case since the evidence on record proves the continuous work done by the claimants for more than 240 days in a calendar year under the direct supervision and control of the respondent it is held that the claimants have succeeded in proving the effective control test.

This reference has been received to adjudicate with regard to the justification of the claim for regularization of the service of the workmen who have worked for the respondent for more than 10 years. In the preceding paragraphs it has already been held that the claimants are working under the supervision and control of the respondent and there exists a relation of employer and employee between them. It has also been proved that during this period the claimants have worked for more than 240 days in a calendar year. This fact has been testified by the claimants under oath during examination as witnesses. It is the further case of the claimants that the respondent is having 74 vacancies in the erstwhile Group-D post and despite having vacancies refused to regularize their service which amounts to unfair labour practice. The witness for the management during cross examination has clearly denied about the availability of Group-D vacancies. The claimants have proved certain documents marked as exhibit WW1/9 (colly) which is a statement of case submitted by the commanding officer FOL Depot to the higher authorities for making the casual labours permanent in the said Depot. This letter clearly shows that there are 74 permanent vacancy against which the claimants can be regularized. But in his oral evidence the MW1 has denied about the vacancies existing in different units of FOL Depot. The documentary evidence adduced by the claimants no doubt supersedes the oral evidence of MW1. It is the further case of the claimants that pursuant to the order passed by the Hon'ble CAT Principal Bench Delhi directing regularization of service of these claimants the respondent took steps for regularizing few of the daily wage casual workers. Furnishing a list of such casual workers the claimants have stated that the respondent exhibited discriminating attitude. Another document has been placed on record as exhibit WW1/33 which is a correspondence between the administrative officer of FOL Depot and the President of Mazdoor Sangh FOL depot which clearly shows that 48 labourers are regularly working in the depot since last many years and the Director General of Army has raised an issue with regard to the vacancies of permanent labours and giving opportunity to these 48 labourers. All these evidence taken together lead to a conclusion that the claimants are working continuously for years together under the respondent and there are vacancies in the Unit. The witness examined on behalf of the respondent thought at one point of time denied the stand of the claimants that some of the daily wager have been made regular after the order passed by the Hon'ble CAT at the other point of time during cross examination dated 09.09.2009 admitted that 4 persons namely Dher Singh and others pursuant to the order dated 16.02.2001 passed by the Hon'ble CAT were regularized in their post but in a different unit. This clearly lead to a conclusion that the claimants have been subjected to unfair labour practice though engaged continuously for years and not regularized like the 4 other persons.

The Unfair Labour Practice defined u/s 2(ra) means any of the practice specified in the V schedule of the I D Act. Under the said V Schedule to employ workmen as Badlis, casuals or temporaries and to continue them as such for years with the object of depriving them of the status and privilege of permanent workmen amounts to unfair labour practice. In this case the documents filed by the workmen showing regularization of some of the casual workers coupled with the admission of MW1 lead to a conclusion that the claimants have been working for long years and the respondent in utter disregard of law deprived them from regularizing their service against the vacant post which amount to unfair labour practice.

The Ld. A/R for the management submitted that the OM of 1993 of DOPT is for one time exercise and the same cannot be a recurring practice. One who had completed one year as casual workers on the date of publication of the OM in 1993 is only entitled for regularization. In this case barring 6 to 7 workers all have been engaged for the first time after 1993 and as such they cannot avail the opportunity laid down in the scheme for regularizing the service of casual workers. In addition to that he also placed reliance in the case of Secretary of state of Karnatak and others vs. Uma Devi and others reported in (2006)4 SCC Page 1 to say that regularization of these workers will stand opposed to the constitutional mandate for equal opportunity in employment. On behalf of the claimant objection was raised regarding the applicability of the judgment of Uma Devi referred supra to Industrial Dispute relating to unfair Labour Practice or the benefit under the OM of 1993 issued by DOP&T. Their claim plain and simple for regularize considering their long engagement and availability of permanent vacancies.

In the case of Uma Devi the Hon'ble Supreme Court have held that the persons who were appointed on temporary and casual basis without following proper procedure cannot claim absorption or regularization since the same is opposed to the policy of public employment. But this is not a case of claiming automatic regularization or absorption. The claimants of this proceeding have ventilated their grievance since they were prevented from being regularized against the existing vacancies describing the same as unfair labour practice.

The effect of the constitution Bench judgment of the Apex Court in the case of Uma Devi came up for consideration with reference to unfair labour practice by the Hon'ble Supreme Court in the case of **Mahrashtra State Road Transport and Another vs. Casteribe Rajya Parivahan Karamchari Sangathan reported in (2009)8 SCC Page 556** wherein the Hon'ble Apex Court came to hold that the judgment in the case of Uma Devi has not over ridden the powers or Industrial and Labour Courts for passing appropriate order, once unfair labour practice on the part of the employer is established. The judgment of Uma Devi does not denude the Industrial and Labour Court of their statutory power.

Besides the case of **Maharashtra Road Transport** referred supra, the Hon'ble Supreme Court in the case of **Shri Ajay Pal Singh vs. Haryana Warehousing Corporation decided in Civil Appeal No. 6327 of 2014** disposed of on 09th July 2014 have held that:

> "The provisions of Industrial Disputes Act and the powers of the Industrial and Labour Courts provided therein were not at all under consideration in Umadevi's case. The issue pertaining to unfair labour practice was neither the subject matter for decision nor was it decided in Umadevi's case."

Thus after going through the judgments of **Maharashtra Road Transport and Ajay Pal Singh** refereed supra it is held that the observation made in the case of Uma Devi has no applicability to the facts of the present case where the workmen have been subjected to Unfair Labour Practice being engaged for work on daily wage basis for a prolonge period. Not only that the Hon'ble High Court of **Jammu and Kashmir in the case of J and K Bank Limited vs. Central Government Industrial Tribunal and Others reported in 2018 LAB I.C. 2970** have held:

> "Unfair Labour Practice-what amounts to-workmen continued in temporary/contractual capacity for years together despite availability of vacant posts, aimed at depriving them of status and privileges of permanent workmen- clearly amounts to unfair labour practice- directions issued by Tribunal to appellant Bank to frame scheme for regularization of respondent workmen within period of 3 months and that respondents workmen would be deemed to have been regularized in case of failure of appellant- Bank to frame scheme, held, justified."

In this case the oral and documentary evidence since proves the continuous service of the workmen for the respondent on daily wage basis since the year 1982, the decision of the management in not regularizing their service against the permanent vacancy is held to be illegal and unjustified.

The witness examined on behalf of the management as MW1 has stated that 40 persons who are the claimants of this proceeding are working for the respondent. Though under the scope of the reference this tribunal is to adjudicate about the legality and justifiability of the management in not regularizing the service of the workmen, the industrial adjudicator under the Industrial Dispute Act enjoys wide power for granting relief which would be proper under a given circumstance. In the case of **Hari Nandan Prasad and Another vs. Employer I/R to Management FCI reported in (2014)7 SCC 190** the Hon'ble Supreme Court have held that the power conferred upon Industrial Tribunal and Labour Court by the Industrial Dispute Act is wide. The Act deals with Industrial Dispute, provides for conciliation, adjudication and settlement and regulates the right of the parties and the enforcement of the awards and the settlement. Thus, The Act empowers the adjudicating authority to give relief which may not be permissible in common law or justified under the terms of the contract between the employer and the workman. While referring to the judgment of **Bharat Bank Limited vs. Employees of the Bharat Bank Limited reported in (1950) LLJ 921 Supreme Court** the court came to hold that in setting the dispute between the employer and the workmen the function of the tribunal is not confined to administration of justice in accordance with law. It can confer rights and privileges on either party which it consider reasonable and proper though those may not be within the terms of any existing agreement. It can create new rights and obligations between them which it considers essential for keeping industrial peace.

Here is a case where, as indicated above the workmen have been victimized on account of unfair labour practice by the respondent. The posts for which they are aspirants are still vacant. Keeping the situation in view it is felt proper to issue a direction to the management to frame a scheme for regularization of these workmen within a period of 3 months against the permanent post according to their eligibility, experience and expertise and age of superannuation which would meet the ends of justice. This direction is specific in respect to the workmen of this claim petition as per the list annexed to the award and passed in exercise of the power conferred on the tribunal to grant any other relief as per the reference received from the Appropriate Government. This issue is accordingly answered in favour of the workmen.

ISSUE NO.2

In view of the finding given while discussing issue no. 2 it is held that the workmen of this proceeding are entitled for regularization of service from the date they completed one year as casual worker having worked for 240 days in a calendar year. The respondent while regularizing their service after framing scheme shall keep in view the age of superannuation of individual claimant and shall pay the arrear of their remuneration from the date of regularization at the rate of payment made to the regular employees as their counter parts. Hence, ordered.

ORDER

The reference be and the same is answered in favour of the workmen. It is held that the action of the management in depriving the workmen from regularizing their service is illegal and unjustified and amounts to unfair labour practice. The respondent department is hereby directed to frame a scheme for regularizing these workmen (as per the list annexed) within 3 months hence subject to the condition that they are within the age limit of superannuation as provided for government servants. It is further directed that the management shall not

adopt dilly dallying practice which would be detrimental to the interest of the workmen since they would thereby run out of the prescribed age limit for superannuation from government service. The service of these workmen shall be regularized with effect from the date each workmen completed working for one year as a casual worker. The respondent is directed to formulate a scheme to give effect to this direction within 3 months from the date of publication of the award and complete the exercise of regularization within a further period of 2 months and pay the differential remuneration of the individual claimant from the date of regularization during that period without interest failing which the amount so accrued to the benefit of individual workmen shall carry interest @9% per annum from the initial date of accrual till the payment is made. Consign the record as per Rule. Send a copy of this award to the appropriate government for notification as required under section 17 of the ID act 1947.

S. No.	Name	Fathers Name	Designation	Service
1.	Titu Ram	Kaliyaram	Dainik Karamchari	10.11.1982
2.	Munni Lal	Nandlal	Dainik Karamchari	15.09.1984
3.	Satbir	Banwari Lal	Dainik Karamchari	01.07.1984
4.	Baccho Lal	Ram Sumer	Dainik Karamchari	.01.12.1986
5.	Narayan Day	Nepal Chand	Dainik Karamchari	01.12.1986
6.	Chiranjee Lal	Rooda Ram	Dainik Karamchari	01.12.1986
7.	Rajender Kumar	Pancham Singh	Dainik Karamchari	01.12.1986
8.	Uday Bhan	Hukum Chand	Dainik Karamchari	01.12.1986
9.	Kartar	Mange Ram	Dainik Karamchari	01.02.1987
10	Raj Kumar	Ram Chandrar	Dainik Karamchari	04.12.1989
11.	Bhram Prakash	Dayaram	Dainik Karamchari	04.04.1991
12	Karan Singh	Govind Singh	Dainik Karamchari	01.05.1991
13	Shiv Singh	Kali Ram	Dainik Karamchari	01.01.1993
14.	Engine Kumar	Ramharak	Dainik Karamchari	15.06.1998
15	Hardev Singh	Dayaram	Dainik Karamchari	15.06.1998
16	Naresh Kumar 1	Hariram	Dainik Karamchari	15.06.1998
17.	Brijmohan	Khairati Ram	Dainik Karamchari	11.6.1998
18.	Champit Lal	Ram Pati Sharma	Dainik Karamchari	23.06.2001
19.	Harender	Kamval Singh	Dainik Karamchari	23.06.2001
20.	Sunil Dutt	Dharampal	Dainik Karamchari	14.05.2002
21.	Suraj Bhan	Pooran Chand	Dainik Karamchari	10.06.2002
22.	Veer Bahadur	Roop Yadav	Dainik Karamchari	21.07.2002
23.	Naresh Kumar 2	Shiv Nath	Dainik Karamchari	10.06.2002
24.	Anand Kumar	Jagdish Kumar	Dainik Karamchari	07.09.2002

25.	Laxman	Rameshwar	Dainik Karamchari	01.07.2003
26.	Sanjeev Kumar 1	Krishan Ojha	Dainik Karamchari	01.09.2003
27.	Lokesh Kumar	Ghasitaram	Dainik Karamchari	01.12.2003
28.	Beer Singh	Prabhati Lal	Dainik Karamchari	01.012.2003
29.	Suraj	Cheetar	Dainik Karamchari	2003
30.	Varun Mahlotra	Upkar Sahe	Dainik Karamchari	01.01.2003
31.	Ansar	Sajid Hussain	Dainik Karamchari	01.01.2003
32..	Satya Prakash	Rajeshwar	Dainik Karamchari	2003
33.	Kalika Prasad	Suraj Prasad	Dainik Karamchari	17.02.2003
34.	Rajesh Kanojia	Bhisan Das	Dainik Karamchari	04.12.2004
35.	Rajesh 2	Phalad Singh	Dainik Karamchari	12.11.2004
36.	Sanjay	Hari Chand	Dainik Karamchari	05.05.2004
37.	Ravi Das	Roshan Lal	Dainik Karamchari	02.04.2007
38.	Sandeep	Krishan Lal	Dainik Karamchari	02.04.2007
39.	Manish	Suresh Kumar	Dainik Karamchari	12.01.2009
40.	Amar Singh	Ratan Lal	Dainik Karamchari	01.05.2010

The reference is accordingly answered.

Dictated & Corrected by me.

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 13 अगस्त, 2021

का.आ. 588.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार निदेशक, राष्ट्रीय खरपतवार विज्ञान अनुसंधान केंद्र, महाराजपुर, जबलपुर (म.प्र.); मेसर्स आरबी कंसल्टेंसी एंड सिक्योरिटी सर्विसेज, मालिक श्री राकेश बैरागी, पुत्र श्री एस.डी.बैरागी), 404, नेहरूनगर, गढ़ा, जबलपुर (म.प्र.) के प्रबंधतंत्र के संबद्ध नियोजकों और श्री ओंकार पटेल, कामगार व अन्य के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण औद्योगिक विवाद में औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या CGIT/LC/R/13/2010) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 15.07.2021 को प्राप्त हुआ था।

[सं. एल-42012/73/2009- आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the13th August, 2021

S.O. 588.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. CGIT/LC/R/13/2010) of the Central Government Industrial Tribunal cum Labour COURT, JABALPUR, as shown in the Annexure, in the Industrial dispute between the employers in relation to The Director,National Research Centre for Weed Science, Maharajpur, Jabalpur (M.P.); The M/s. R.B. Consultancy & Security Services, Proprietor Shri Rakesh Bairagi, S/o Shri S.D. Bairagi) 404, Nehrunagar, Garha,Jabalpur (M.P.) and Shri Omkar Patel and Others Workers which was received along with soft copy of the award by the Central Government on 15.07.2021.

[No. L-42012/73/2009-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/13/2010

Present: P. K. Srivastava, H.J.S..(Retd)

Shri Omkar Patel & Others.
Village Khajari,
Post Adhartal, Jabalpur (MP) ... Workman

Versus

The Director,
National Research Centre for Weed Science
Maharajpur, Jabalpur

M/s. R.B. Consultancy & Security Services
Proprietor Shri Rakesh Bairagi
S/o Shri S..D. Bairagi
404, Nehrunagar, Garha,
Jabalpur.

... Management

AWARD
(Passed on this 15th day of July-2021)

As per letter dated 7/1/2010 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No. L-42012/73/2009-IR(DU). The dispute under reference relates to:

"***Whether the action of the management of M/s R.B. Consultancy and Security Services Contractor, engaged by the Management of National Research Centre for Weed Science, in terminating the services of Shri Omkar Patel w.e.f. 1/9/2008, Shri Zamil Hussain w.e.f. 12/5/2008 and Shri Vijay Patel w.e.f. 17/2.2009 is legal and justified?if not, what relief the workmen are entitled to?*** ."

1. After registering the case on the basis of reference, notices were sent to the parties.

2. The case of the workman as stated in their statement of claim is that they were deployed with Directorate of National Research Centre for Weed Science in the year 2000-01 through contractor and were in continuous service till their retrenchment in the year 2009 by pick and choose method without any notice or compensation. The constractor M/s R.B.Consultancy and Security Services was their primary employer and the Directorate of National Research Centre for Weed Science was their Principal Employer where the workman were deputed for their work in the workshop unit under the control of Principal Employer and used to assign and supervise their day to day work. According to the workman, their sudden retrenchment is violative of Section 25F and 25G of the Industrial Disputes Act,1947 because they had been in continuous service of their employer for a period of more than 240 days in every year including the year preceding the date of their retrenchment. Accordingly they have prayed for setting aside their retrenchment and they be reinstated.

3. The case of Management i.e. Directorate of National Research Centre for Weed Science, the Principal Employer is that the workman were engaged through contractor M/s R.B.Consultancy and Security Services under an agreement dated 6-2-2008 between the Principal Employer and contractor wherein the contractor agreed to supply his workman for works details, rate of payment and amount specifically mentioned in the agreement. The workman were not attentive towards their job, rather they were habitual late comers,

intentionally absenting themselves and were negligent in performing their duties. On the request of the Principal Employer, these workman were withdrawn by the contractor and replaced by other workman. Since there was no relationship of employer and employee between the applicant/workman and Directorate of National Research Centre for Weed Science, there is no industrial dispute between them. Also it has been pleaded that in fact the workman are the employees of the contractor and not of the Principal Employer. Accordingly, it has been prayed that the reference be answered in favour of the Management of Directorate of National Research Centre for Weed Science.

(Respondent No.2)

4. The contractor^ never appeared in the case inspite of service of notice and vide order dated 13-7-2011, passed by my learned Predecessor the case proceeded ex-parte against the contractor M/s R.B.Consultancy and Security Services.

5. The workman side has filed and proved photocopy of attendance register, for the period in question. The workman side examined witnesses. The workman Zameel Hussain, Omkar Patel whohave been examined by Management.

6. Management (Respondent No.2) has examined Shri Sujeet Kumar Administrative Officer of Directorate of National Research Centre for Weed Science and Shri M.P. Tiwari, Technician. The second Management M/s. R.B.Consultancy and Security Services have not examined any witness and nor have cross-examined any workers and the reference proceeded ex-parte as mentioned earlier.

7. The workman and Principal Employer(Respondent No.3), both have filed written arguments. Their oral arguments have also been heard. I have also gone through the record as well.

8. It has been submitted on behalf of the workman that the workman were retrenched on the complaint made by the staff of Principal Employer. No inquiry was conducted in this respect . No notice or compensation was given to them by their employer i.e. M/s R.B.Consultancy and Security Services, hence their retrenchment is against law. The workman side has further submitted that the Principal Employer is an Industry within the definition of Industrial Disputes Act,1947. The workman side has referred to following cases:-

9. **Gauri Shanker Vs. State of Rajasthan** , Civil Appeal No.3701/2015 decided on 16-4-2015, wherein it was held that due to non-production of muster roll by employer, adverse inference was rightly drawn against the employer.

10. **Bangalore Water Supply and Sewerage Board Vs. Rajappa & Others**, AIR 1978 SCC 543, in this case industry has been defined and Principle of law has been laid down in this respect.

11. The learned counsel for Principal Employer has mainly submitted that there is no relation of employer and workman between them and the workman are the employees of the Security Agency i.e.M/s R.B.Consultancy and Security Services, hence they cannot be saddled with any responsibility for retrenchment of these workman. The learned counsel has referred to case Law **International Airport Authority Vs. International Air Cargo Workers**, Civil Appeal No.2244/2002 (2009) SCC374 passed on 13-4-2009.

12. The relevant provision of the Act requires to be referred before entering into any discussion which is as follows, Section2(oo), Section 25(B), Section 25(G), Section 25(N), Section 25(F):-

2[(oo) "retrenchment" means the termination by the employer of the service of a workman for any any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include— (a) voluntary retirement of the workman; or (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf;

Section 25 B:-

Definition of continuous service.- For the purposes of this Chapter,--

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman; (2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer- (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than- (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and (ii) two hundred and forty days, in any other case; (b) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is

to be made, has actually worked under the employer for not less than- (i) ninety-five days, in the case of a workman employed below ground in a mine; and (ii) one hundred and twenty days, in any other case.

25F. Conditions precedent to retrenchment of workmen.- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice: 1[***] (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay 2[for every completed year of continuous service] or any part thereof in excess of six months; and (c) notice in the prescribed manner is served on the appropriate Government 3[or such authority as may be specified by the appropriate Government by notification in the Official Gazette.]

25G. Procedure for retrenchment.- Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman.

[25N. Conditions precedent to retrenchment of workmen.—(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,— (a) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and (b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf. (2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner. (3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the persons interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen. (4) Where an application for permission has been made under sub-section (1) and the appropriate Government or the specified authority does not communicate the order granting or refusing to grant permission to the employer within a period of sixty days from the date on which such application is made, the permission applied for shall be deemed to have been granted on the expiration of the said period of sixty days. (5) An order of the appropriate Government or the specified authority granting or refusing to grant permission shall, subject to the provisions of sub-section (6), be final and binding on all the parties concerned and shall remain in force for one year from the date of such order. 1. Sub-section (6) re-numbered as sub-section (10) by Act 49 of 1984, s. 4 (w.e.f. 18-8-1984). 2. Subs. by s. 5, ibid., for section 25N (w.e.f. 18-8-1984). 33 (6) The appropriate Government or the specified authority may, either on its own motion or on the application made by the employer or any workman, review its order granting or refusing to grant permission under sub-section (3) or refer the matter or, as the case may be, cause it to be referred, to a Tribunal for adjudication: Provided that where a reference has been made to a Tribunal under this sub-section, it shall pass an award within a period of thirty days from the date of such reference. (7) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him. (8) Notwithstanding anything contained in the foregoing provisions of this section, the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the establishment or death of the employer or the like, it is necessary so to do, by order, direct, that the provisions of sub- section (1) shall not apply in relation to such establishment for such period as may be specified in the order. (9) Where permission for retrenchment has been granted under sub-section (3) or where permission

for retrenchment is deemed to be granted under sub-section (4), every workman who is employed in that establishment immediately before the date of application for permission under this section shall be entitled to receive, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months.]

13. As the reference reads, the point for determination is whether the action of the coantractor firm i.e. M/s. R.B. Consultancy and Security Services in terminating the services of these workman is legal and justified or not? As stated above, the contractor firm did never appear inspite of service and the case has proceeded ex-parte against them. There is on record the statement of the workman on oath regarding their employment and working through the contractor which is further admitted by the witness of Principal Employer, hence this fact is further corroborated by photocopy of attendance register. The contractor did not appear nor did he contest the case of the workman on any point by filing pleadings and evidence in this respect, hence it will be deemed that the contractor has virtually admitted the claim of the workman that the workman were its employees deputed with the Principal Employer from the evidence on record, it is proved that these workman were in continuous engagement for an period of 240 days preceding the date of their termination . It is also proved that no notice or compensation was given to these workman, hence the action of the Management of contractor company in terminating the services of these workman is held violative of Section 25F and Section 25G of the Industrial Disputes Act, 1947.

14. In the light of the above findings, the question arises as to what relief the workman are entitled? The workman were not appointed against any permanent vacancy of the contractor M/s. R.B.Consultancy and Security Services, hence their reinstatement will not meet the ends of justice. Keeping in view the fact and circumstances of the case in hand, a lump sum monetary compensation in lieu of reinstatement will meet the ends of justice in my view. Accordingly, each of the workman is held entitled to a lump sum monetary compensation of Rs.1,00,000/-(Rupees one lakh only) from the Management of M/s R.B.Consultancy and Security Services, the contractor.

15. On the basis of the above discussion, following award is passed:-

A. The action of the management of M/s. R.B. Consultancy and Security Services Contractor, engaged by the Management of National Research Centre for Weed Science, in terminating the services of Shri Omkar Patel w.e.f. 1/9/2008, Shri Zamil Hussain w.e.f. 12/5/2008 and Shri Vijay Patel w.e.f. 17/2.2009 is held not legal and justified

B. The workman are held entitled to lump sum monetary compensation of Rs.1,00,000/-(Rs. One lakh only) each from the Management of M/s. R.B. Consultancy and Security Services Contractor.

C. No order as to costs.

16. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

P. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 13 अगस्त, 2021

का.आ. 589.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार कमांडेंट, आयुध डिपो किला, इलाहाबाद के प्रबंधतंत्र के संबद्ध नियोजकों और श्री डी के सिंह उपाध्यक्ष, ओडी किला श्रमिक संघ झूंसी- इलाहाबाद (यू.पी), के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण औद्योगिक विवाद में औद्योगिक अधिकरण एवं श्रम न्यायालय, कानपुर के पंचाट (संदर्भ संख्या 57/2017) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 13.08.2021 को प्राप्त हुआ था।

[सं. एल-14011/06/2017-आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 13th August, 2021

S.O. 589.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 57/2017) of the Central Government Industrial Tribunal-cum Labour Court –Kanpur , as shown in the Annexure, in the Industrial dispute between the employers in relation to The Commandant,Ordnance Depot Fort, AllahabAd (U.P.) and Shri D. K. Singh Vice President, OD Fort Shramik Sangh Jhunsi, Allahabad (U.P.) which was received along with soft copy of the award by the Central Government on 13.08.2021.

[No. L-14011/06/2017- IR (DU)]

D. K.HIMANSHU, Under Secy.

ANNEXURE

BEFORE SHRI SOMA SHEKHAR JENA, PRESIDING OFFICER CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT Kanpur

ID NO. 57 of 2017

In the matter of Industrial Dispute

Between :

Sh. D.K. Singh Vice President,
OD Fort Shramik Sangh,
Add. Y 11 E 282, Trivenipuram,
Jhunsi, ALLAHABAD

Versus

The Commandant,
Ordnance Depot Fort,
ALLAHABAD-211005

AWARD

This award arises out of a reference issued by Government of India in exercise of the power conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) as mentioned in notification no. L-14011/06/2017-IR(DU) dated 26.07.2017. The reference is read as follows:-

> "**Whether the action of management of OD Fort, Allahabad in not granting departmental promotion to three workmen named Shakti Singh, Pawan Kumar Vishwakara and Pawan Kumar Shakya over the post of LDC under 10% quota is justified? If not, what relief the workmen are entitled to?"**

The petitioners Pawan Kumar Vishwakarma, Shakti Singh and Pawan Kumar Sakya who are under employment of the OD Forts as group 'D' employees have prayed for the direction of the Tribunal to their employer to consider their claim for appointment to the cadre of group 'C' post with consequential financial benefit w.e.f from 06.01.2016. The contentions advanced on behalf of the applicant may be summarized as follows:- Shri Shakti Singh and Shri Pawan Kr. Vishwakarma were appointed as messenger on 10.08.2007 and 04.11.2004 respectively. Applicant Pawan Kumar Sakya was appointed as safaiwala on 12.10.2007. The Departmental Promotion Committee (here-in-after stated in short the DPC) convened on 12.09.2014 found above 3 applicants eligible for promotion to the post of L.D.C but they were kept in the waiting list due to limited vacancies. It is averred that by the letter 27602/GPC/LDC/A-3/CA-6 dated 31.12.2014 all units of AOC corps were requested to send names of eligible group 'D' employees for considering them for promotion by the DPC. It is stated that the administration of OD FORT, Allahabad had not forwarded the details of the aforesaid 3 petitioners/workmen in response to letterno.27602/GPC/LDC/A-3/CA-6 dated 16.01.2015. The OD Fort, Allahabad was requested to furnish the names of suitable, eligible group 'D' employees for promotion by 31.03.2015. The DPC was held in the month of November 2015. The candidates of various units under AOC corps were granted promotion except the petitioners as their names had not been forwarded by the employer of the opposite party.

One Chandra Shekhar Reddy appointed as group 'D' employee on 20.10.2008 in the office of AOC record at Sikandrabad was promoted. It is asserted that the petitioners are fully eligible and were entitled for promotion to the post of Lower Division Clerk w.e.f 06.01.2016 with consequential financial benefits. Stating as above it has been prayed by the petitioners for issuance of the direction to the respondent authorities to consider the promotion of the workmen w.e.f 06.01.2016 with consequential financial benefits.

It stands undisputed that Pawan Vishwakarma was initially appointed on 04.11.2004 as messenger and Shakti Singh was appointed as messenger on 10.08.2007 under OBC Category. It stands uncontroverted that Pawan Kumar Sakya was appointed as safaiwala on 12.10.2007 under 'S.C' category. It is mentioned in the written statement that every year names of the volunteers are asked by Army Ordnance Corps Records under the 10% quota of Departmental Promotion. Till 2014 Departmental Promotion was applicable to only GP 'C' Non Industrial Employees (Messenger, Safaiwala, Barber, Cook etc.) Promotion through departmental quota was purely based on seniority cum fitness basis. The names above mentioned figured in the reserve list for the year 2014. One more condition which was added is that English Typing Test was required to be conducted and names of individuals passing the test to be forwarded to Army Ordnance Corps (Records) (copy of the letter is at Annexure 'III'). Names of volunteer employees were asked by Army Ordnance Corps Records (PI ref annexure III and Para 2 (d) for the year 2015 Departmental Promotion Committee). However the Deport could not conduct the typing test and the list of passed individuals could not be forwarded to Army Ordnance Corps (Records). Pressing commitment of ongoing recruitment in the depot, conduct of Departmental Committee Exam for the post of Lower Division Clerk (LDC) under 5% quota and departmental exam for the post of Storekeeper under 100% quota lost to oversight. The depot had made all out efforts by writing to AOC (Records) but it was turned down with advice to submit a fresh application for the next Departmental Promotion Committee. The dealing clerk was warned and moved to another group so that the same mistake is not repeated.

The points to be answered in this proceedings are as follows:-

1. Whether the petitioners have been justifiably denied promotions to the cadre of group 'C' L.D.C

2. To what workable relief petitioners are entitled.

At the time of hearing the argument it is asserted by the petitioners that in year 2014 they had cleared the qualifying test for type writing and were found eligible for promotion to the post of L.D.C but they were kept in the waiting list due to limited number of vacancies. The above assertion by the claimant has not been controverted by the employer. It appears that before the conciliation meeting it was mentioned by the administrative officer that due to heavy workload the claim of the petitioners could not be imparted due consideration.

It is clear that for the inaction of the employer the petitioners were deprived of the opportunity of getting any scope of consideration for promotion against the 10% quota in the category of L.D.C and their junior B. Chandra Shekha Reddy could get a promotion. For this kind of anomalous situation and for remedial rectification of wrong done a review DPC should be held keeping in mind the total vacancies of the year and the petitioners if found qualified for promotion could be promoted notionally with reference to date of promotion of their junior. In view of discussions stated above the following workable exercise shall be taken up by the employer:

The O.P no. 1 shall conduct typewriting skill test indispensable for filling of the L.D.C post and other tests of fitness and the OP shall hold DPC afresh specially for the petitioners in the event they are found fit for consideration to be promoted against the 10% quota for LDC post.

The reference is answered accordingly. In the factual scenario the parties are left to bear their respective costs.

Let a soft copy of this award be sent to Ministry of Labour, New Delhi for publication.

Hard copy thereof will follow in due course of time.

SOMA SHEKHAR JENA, Presiding Officer

नई दिल्ली, 18 अगस्त, 2021

का. आ. 590.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पंजाब नेशनल बैंक के प्रबंधतंत्र, संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, कानपुर के पंचाट (संदर्भ सं. 81/2002) को प्रकाशित करती है।

[सं. एल-12011/168/2002-आईआर (बी-II)]

राजेन्द्र सिंह, अवर सचिव

New Delhi, the 18th August, 2021

S.O. 590.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 81/2002) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Kanpur as shown in the Annexure, in the industrial dispute between the management of Punjab National Bank and their workmen.

[No. L-12011/168/2002-IR(B-II)]

RAJENDER SINGH, Under Secy.

ANNEXURE

BEFORE SHRI SOMA SHEKHAR JENA, PRESIDING OFFICER CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT KANPUR

ID NO. 81 of 2002

In the matter of Industrial Dispute

Between :

The General Secretary,
U.P, Bank Karmchari Sangh,
45, A, Chandra Nagar, Lal Bangla,
Kanpur (U.P)-208007

Versus

The Regional Manager,
Punjab National Bank
Zonal Office, 94, Mahatma Gandhi Marg,
Lucknow (U.P)-0

AWARD

This award arises out of a reference issued by Government of India in exercise of the power conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) as mentioned in notification no. **L-12011/168/2002-IR(B-II) dated 10.12.2002**. The reference is read as follows:-

"Whether the action of the management of Punjab National Bank in dismissing Shri Om Prakash Pandey from services w.e.f 15.1.2001 is legal and justified? If not, what relief is he entitled for?"

On behalf of the claimant workman the averments submitted before this Tribunal may be summarized as follows:-

Claimant workman was working as a group 'D' employee in the employer bank P.N.B H.A.L. branch. Claimant workman was suspended by the employer bank by letter dated 17.01.2000 which is Annexure-I. Later the employer bank, on the basis of aforementioned letter, lodged a case against the claimant on 18.01.2000 in Lucknow situated Gazipur, police station under section 406 and 420. The case number was 20/2000. On the request of the claimant the enquiry of the case was delegated to special Anusandhan Branch, Kesar bagh, Lucknow. As a result of the enquiry the claimant workman was exonerated and 3 other employees of the branch were found guilty under section 406 and 420 in the case of 20/2000 though earlier the employer bank put all the blame only on the claimant workman.

In exasperation to the exoneration of delinquent workman, the claimant workman was charge sheeted with false allegations. Neither the charge sheet dated 15.09.99 for his alleged acts of gross misconduct committed by him was ever served upon him nor he was ever given opportunity to participate in any kind of disciplinary or departmental enquiry. Even the employer bank failed to produce any kind of evidence or witness support of the allegation served upon the claimant workman. The departmental/disciplinary enquiry of the employer bank was completely one sided and full of hostility and as a result of the biased enquiry worker was dismissed from his service without notice (dismissal without notice).

Workman further stated that all the allegations were false in nature and the allegations fell beyond the provisions of the Bipartite Settlement. The Charge sheet served upon him was illegal and against the provisions

of the Bipartite Settlement. Claimant workman prayed before the Hon'ble Tribunal for quashing the order and reinstating him in service with back wages considering that the claimant workman was an employee of group 'D' category and belonging to economically weaker section of the society.

On behalf of employer bank (P.N.B) the averments made in its written statement can be concisely stated as follows:-

Sri Pandey (delinquent workman) while working as Peon at BO HAL Lucknow was served with a charge sheet dated 15.09.99 a copy of which is enclosed and marked as Annexure ME-1/1-ME-1/2. The claimant workman submitted his reply dated 21.01.99 to the said charge sheet which was not found to be satisfactory to the disciplinary authority. Accordingly vide order dated 26.10.99 departmental enquiry was initiated to look into the truthfulness of the allegations made vide charge sheet dated 15.9.99. The Enquiry Officer conducted enquiry in accordance with the principle of natural justice during which all reasonable opportunities were afforded to delinquent workman to present his case and to defend himself during enquiry by a representative of his choice. However, it is submitted that claimant workman with ulterior objective did not participate in the enquiry with the result, that the said enquiry was concluded ex-parte. The Enquiry officer submitted his report dated 13.04.2000 to the Disciplinary Authority with conclusions as charges proved. The Findings of the Enquiry Officer was sent to claimant workman vide letter dated 12.08.2000 to give his representation theron. Claimant workman, however, did not submit any representation on the report submitted by the Enquiry Officer where after the Disciplinary Authority vide show cause notice dated 21.10.2000 proposed punishment of 'dismissal without notice' upon the claimant workman. He was also advised to appear for personal hearing on 18.11.2000. Further, since the claimant workman did not appear for personal hearing on 18.11.2000 without assigning any reason, the Disciplinary Authority adjourned the personal hearing to 25.11.2000 where after on the request of the workman, the personal hearing was adjourned to 13.1.2001. Claimant workman however, again did not appear for the personal hearing on 13.1.2001 and made yet another request for an adjournment. The same was not accepted and thereafter the disciplinary Authority, after considering the entire material on the record inflicted punishment of 'dismissal without notice' upon the claimant workman vide order dated 15.1.2001.

It is submitted that under the provisions of the Bipartite Settlement, workman employee has got a right to prefer an appeal within 45 days against the order passed by the Disciplinary Authority. It is stated that claimant workman did not prefer any appeal under the provisions of the Bipartite Settlement to the Appellate Authority and in view of this, it is submitted that the so called present reference made by the appropriate Government to this Hon'ble Tribunal is premature. Claimant workman was placed under suspension in the meanwhile, vide order dated 17.1.2000 for his alleged involvement in the fraud of Rs 18,000/- in one SF A/c No. 4049 at BO: HAL, Lucknow in respect of which an FIR was filed by the bank with Police Station Ghazipur, Lucknow. It is averred that the claimant workman was given the charge sheet dated 15.9.99 for his alleged acts of gross misconduct committed by him within the meaning of para 19.5 of the Bipartite Settlement. It is further denied that the punishment of "dismissal without notice" has been inflicted upon the claimant workman by the Disciplinary Authority by way of any connivance with one Shri Uma Shankar Srivastava who was the defence representative of claimant workman in the departmental enquiry. As regards the departmental enquiry, it is reiterated that full opportunity was made available to claimant workman to defend himself. However for the reasons best known to himself, he did not avail the said opportunity.

The points to be answered in this proceeding are as follows:-

1. Whether the action of management of P.N.B in dismissing O.P Pandey (claimant) from services w.e.f 15.01.2001 is legal and justified.
2. Whether the reference as received in this tribunal without any effort by the claimant by preferring appeal is maintainable?
3. To what relief the claimant is entitled?

Point No.1

It is clear that the claimant at one stage before the charge sheet was employed as peon in the employer P.N.B in its branch. The charge sheet dated 15.091999 copy of which has been produced before this Tribunal contains 3 heads. The first component of the charge speaks that the claimant in December 1997 had received Rs 80,000/- from one Kamod Pathak giving assurance to him to arrange a plot of area 1250 sq.feet at Gomti

Nagar then owned by Smt. Rekha. The component of the charge is based on the allegation that the claimant going beyond the sphere of work assigned to him was indulging in real estate business. Though it was alleged that the claimant was indulging in real estate business there is no adequate material before this Tribunal for concluding that the claimant was very often indulging in real estate transactions. There is no whisper that the claimant was thoroughly negligent in his duty in the bank. It is submitted on behalf of claimant that Kamod Kumar Pathak had only prayed for refund of amount of Rs 80,000/-

Though indulging in business outside the scope of duty without written permission of the bank can be read as gross misconduct an isolated instance of indulging in one real estate transaction cannot be reasonably read as gross misconduct. The second component of the charge dated 15.09.99 speaks that the claimant was forwarded by the police under accusation of offenses punishable under sections 147, 148, 323, 504, 506 of Indian Penal Code. It is stated that on 29.05.99 he had surrendered and was allowed bail on 31.05.99. It may be correct that the claimant had spent more than 24 hours in judicial custody. His actual role in the said alleged offenses punishable under sections 147, 148, 323, 504 and 506 of Indian Penal Code is not clear. The Third limb of charge speaks that on 07.07.98 the claimant had availed one consumer loan hiding one previous loan availed by him and the said previous loan liability came to light on 16.8.99 by O.D.D. It may be true that the claimant had availed the consumer loan of RS 25,000/- concealing the earlier liability. It was stated on behalf of claimant that the so called availing of the loan concealing the earlier liability may not be read as any act causing serious loss to the bank or any act prejudicial to the interest of the bank. In the bipartite settlement code of conduct to be followed by bank employees has been mentioned. The bank authority in their wisdom has formulated the code of conduct to be strictly followed by the bank employees without deviation. It may be correct that the dilution of code of conduct with extraneous interpretation is likely to cause devastating indiscipline leading to collapse of the banking industry but in the other hand it is also seen that even an employee found guilty of misconduct could be warned or censured or fined or could be awarded stoppage of increment or discharged or awarded dismissal without notice. It appears that the three components of the charge dated 15.9.99 cannot be strictly covered under clause 19.5.(a) and 19.5.(j) of Bipartite settlement governing the service of the bank employees.

At this point it is pertinent to state here the claimant submitted that he was not provided with the copies of the documents which formed the basis of charges. It may be correct that the copies of documents have to be provided to the delinquent for putting forth reasonable defence against the allegations made against him. On the other hand it is seen that the claimant had participated in the departmental proceedings initiated by O.P management as revealed from the undisputed copies of papers. It is apparent that no substantial prejudice occasioned in the departmental enquiry conducted against the claimant. Law is well settled that this Industrial Tribunal may interfere with the order of dismissal of claimant workman when the same is shockingly disproportionate. It is also clear that the claimant had not preferred appeal before the designated appellate authority of employer bank which could have given opportunity to revisit the correctness of the findings and reasonableness and proportionality of the punishment awarded to the claimant. Since no appeal was preferred the reference proceeding is otherwise questionable exercise. A long period has elapsed after the order of dismissal without notice. The whole blame of the situation leading the claimant to go without work cannot be cast on the P.N.B management as the claimant had not preferred appeal before the designated appellate authority. In the scenario his dismissal without notice though not fully justifiable, reinstatement with full back wages also appears to be highly improper. It is also well settled in law whenever dismissal is found to be shockingly disproportionate reinstatement with full back wages cannot be automatically granted.

In the case of **J.K Synthetics Ltd. vs K.P.Agrawal (2007) 2 SCC 433** it is observed by Hon'ble Supreme Court that " *But the manner in which "back wages" is viewed, had undergone a significant change in the last two decades. They are no longer considered to be an automatic or natural consequence of reinstatement. We may refer to the latest of a series of decisions on this question. In U.P State Brassware Coprn. Ltd. V Uday narain Pandy [(2006) 1 SCC 479: 2006 (L&S)250], this Court following Allahabad Jal Sansthan v. Daya Shankar Rai [(2005)5 SCC 124: 2005 SCC 363 : 2005 (L&S) 270] held as follows: (Uday Narain Pandey case [(2006) 1 SCC 479: 2006 SCC (L&S) 250], SCC p 480-g)*

> *"A person is not entitled to get something only because it would be lawful to do so. If that principle is applied, the functions of an Industrial Court shall lose much of their significance.*
>
> *Although direction to pay full back wages on a declaration that the order of termination was invalid used to be the usual result, but now, with the passage of time, a pragmatic view of the matter is being taken by the court realising that an industry may not be compelled to pay to the workman for the period*

during which he apparently contributed little or nothing at all to it and/or for a period that was sent unproductively as a result whereof the employer would be compelled to go back to a situation which prevailed many years ago, namely, when the workman was retrenched. The changes brought about by the subsequent decisions of the Supreme Court, probably having regard to the changes in the policy decisions of the Government in the wake of prevailing market economy, globalisation, privatisation and outsourcing, is evident."

Prima facie it is well found that workman had indulged in sale transactions of land originally belonging to Smt. Rekha in favour of Shri Kamod Kumar. Pathak receiving Rupees Eighty Thousand from Shri Pathak though a single example of playing the role of mediator in land transfer does not make him a regular real estate businessman outside his job assignment under the O.P Management. It is seen that he had not participated in the disciplinary proceeding nor did he appear before the disciplinary authority nor did he prefer any appeal. It is alleged that the workman was placed under suspension under allegation of indulging in fraud of rupees eighteen thousand belonging to a customer of the bank. In such a scenario it appears improper to allow him full back wages during the period of disengagement.

In all kinds of exercise of awarding compensation some amount of guesswork blended with reasonableness and propriety is desirable. Merely because the claimant was awarded dismissal without notice, it cannot definitely be concluded that he was going without engagement. In view of the nature of allegation on record during the course of departmental enquiry the claimant is held to be entitled to get 40% of back wages from point of dismissal 15.01.2001 till the end of his job from the employer bank. He shall be deemed to be continuing in service till his date of superannuation for pensionary benefits.

Since the claimant workman was dismissed by the employer bank (P.N.B) in the facts and circumstances of the case as discussed above his application is partly maintainable.

The reference is answered accordingly. In the factual scenario the parties are left to bear their respective costs.

Let a soft copy of this award be sent to Ministry of Labour, New Delhi for publication

Hard copy thereof will follow in due course of time.

SOMA SHEKHAR JENA, Presiding Officer

Uploaded by Dte. of Printing at Government of India Press, Ring Road, Mayapuri, New Delhi-110064
and Published by the Controller of Publications, Delhi-110054.